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HOUSE OF COMMONS

First Session—Twenty-fourth Parliament

1958

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A Cathers, Esq.,

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

Bill C-37—An Act respecting the Taxation of Estates

MONDAY, JULY 21, 1958

WITNESSES:

Dr. A. K. Eaton, Mr. Gear McEntyre, Mr. W. I. Linton, Mr. D. S. Thorson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

60887-7—1

STANDING COMMITTEE ON BANKING AND COMMERCE

Chairman: C. A. Cathers, Esq.,

Vice-Chairman: Yvon Tassé, Esq.

and Messrs.

Allard,
Allmark,
Asselin,
*Bell (*Carleton*),
Benidickson,
Brassard (*Chicoutimi*),
Cardin,
Chevrier,
Chown,
Coates,
Creaghan,
Crestohl,
Deschambault,
Drysdale,
Dumas,
Flynn,
Fraser,
Gour,
Horner (*Jasper-Edson*),
Jones,
Jung,
Keays,
Lockyer,
MacLean (*Winnipeg North Centre*),
Macnaughton,
Macquarrie,
MacRae,
Martel,
Martin (*Essex East*),
McIlraith
More,
Morris,
Morton,
Nugent,
Pallett,
Pascoe,
Pickersgill,
Regier,
Robichaud,
Rowe,
Rynard,
Southam,
Taylor,
Thomas,
Thrasher,
Vivian,
White,
Winch.

Antoine Chassé,
Clerk of the Committee.

*Replaced Mr. Horner (*The Battlefords*) on July 19th.

MINUTES OF PROCEEDINGS

House of Commons, Room 118.
MONDAY, July 21, 1958.

The Standing Committee on Banking and Commerce met at 3:30 o'clock p.m. The Chairman, Mr. C. Cathers, presided.

Members present: Messrs. Allard, Bell (*Carleton*), Benidickson, Cathers, Chown, Creaghan, Drysdale, Flynn, Fraser, Gour, Jones, Lockyer, MacLean (*Winnipeg North Centre*), Martel, Morton, Nugent, Pallett, Pascoe, Robichaud, Southam, Thomas, Vivian.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance, (on retirement leave): Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolf, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

The Committee resumed from Friday, July 18th, consideration of Bill C-37, An Act respecting the Taxation of Estates.

Clauses 2 to 5 inclusive were severally considered and adopted.

At 6:00 o'clock p.m. the Committee took recess.

EVENING SITTING

The Committee resumed at 8:00 o'clock p.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Bell (*Carleton*), Benidickson, Cathers, Chown, Creaghan, Drysdale, Flynn, Fraser, Jones, Lockyer, MacLean (*Winnipeg North Centre*), MacRae, Martel, Nugent, Pallett, Pascoe, Southam, Tasse, Thomas, Vivian, Winch.

In attendance: The same officials as are listed as in attendance at the afternoon sitting.

The Committee resumed consideration of Bill C-37, An Act respecting the Taxation of Estates.

Clauses 6 to 12 inclusive were severally considered and adopted.

During the study of the several sections of the Bill, Honourable Mr. Fleming, Dr. Eaton, Mr. Linton, Mr. Thorson and Mr. McEntyre were questioned.

At 10:00 o'clock p.m. the Committee adjourned to meet again at 3:30 o'clock p.m. Tuesday, July 22, 1958.

Antoine Chassé,
Clerk of the Committee.

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EVIDENCE

MONDAY, July 21, 1958.
3:30 p.m.

The CHAIRMAN: Gentlemen, I think we have formed a quorum and we will start in again where we left off at our previous meeting. I believe we were at clause 2.

Mr. BENIDICKSON: I regret that I was not able to be with you on Friday, but I think you will admit that very little advance notice was given of the first meeting to discuss this bill. In addition, to plan our studies in connection with the bill, I do not believe there was an agenda meeting of the committee held, which is customary I think in anything as important and big as this bill.

Now I quite realize that the principle of this bill for various reasons has been talked about for several sessions. For various reasons, including elections and so on, it has not come forward, and no one would want to see any slowing down of the activity of the committee that would result in it not going through the next stages through the house. My thought would be that a number of national organizations have expressed a desire to make their views known and it seems to me that we are putting the cart before the horse in going through the bill section by section before we do what is normally done, that is invite some of these nationally interested bodies to come and find out by sending telegrams whether they want to come. I do know that the Canadian Chamber of Commerce as late as May 7 in its submission to the Minister of Finance has of course commended him for making the former bill available to the public from January on, but they stated very positively that it was their desire to put forward their views at public hearings. I tried today to reach two of the women's organizations that have over the past years taken a great deal of interest in this legislation. As I said at the resolution stage of the debate in the house it just happens that the Vice-President of the Canadian Federation of University Women and the President of the Canadian Committeee on the Status of Women both reside in Ottawa. I was not able to reach them on the telephone this morning, but I would imagine that we would not be long delayed if we sent telegrams to them to find out whether it was their desire to object, as I believe it would be. Now similarly I think the tax foundation would like to come before the committee; I have reason to believe they would. It is true that a number of the sections of Bill 248 to which criticism was advanced in the various briefs submitted to the minister since introduction of Bill 248 have been either corrected or some relief has been provided, but the minister himself, I am sure, will admit that there are many of the criticisms that are contained in the briefs, sessional paper No. 208, which have not been subject to change. I can scarcely think that members of this committee on a bill of this importance which is not likely to be up again for parliamentary consideration for some years would want to proceed as rapidly as it seems the intention to do without giving an invitation to people such as the following who have expressed interest. These are the Canadian Retail Federation, the Canadian Chamber of Commerce, the Canadian Bankers Association, the Canadian Tax Foundation, the Canadian Federation of University Women, to which I have referred, and the Canadian Committee on the Status of Women, the Canadian Institude of Certified Public Accountants, the Trust Companies Association of Canada, and the Life Underwriters Association of Canada.

I have heard second hand that the last organization is fairly satisfied with the changes that have been made in the bill, but perhaps by looking at this document we will realize that these national organizations upon the invitation of the minister have put a great deal of study on Bill 248. The new bill was made available for distribution only on Tuesday. It had first reading a week ago Thursday. I tried to get it in regard to work which I proposed to do myself over the week end and it was not available. I tried fairly persistently to get a copy and was not able to do so. I tried the minister's office, the staff and the legislative branch of the House of Commons and it was not available until Tuesday. This is an important and technical bill and I think out of respect to those national organizations whose committees have obviously given their most painstaking care to the former bill we should send telegrams to them and ask them whether or not it would be their wish to come before this committee, and having examined the new bill and compared it with the old come before the committee and give us the benefit of the very professional and expert opinion we all concede they have in this field.

Hon. DONALD M. FLEMING (*Minister of Finance and Receiver General*): If I may say a word, Mr. Chairman, I would like to submit to the committee in line with what I said in introducing the bill before the committee at Friday's meeting that the proposals made by Mr. Benidickson are, I think, entirely unnecessary. The purpose of calling or permitting national organizations to appear before committees of the house, which is sometimes done, is to make sure that their points of view or their submissions are before the committee or that the matters they wish to raise are properly brought before the committee. I do want to say with respect to every one of the organizations that Mr. Benidickson has mentioned that we already have received their briefs and submissions. We know their views and are prepared to lay them before the committee on any subject whatever that we touch on in the bill. That being the purpose of hearing deputations I suggest, Mr. Chairman, it is in this situation totally unnecessary. Before this bill was ever brought to the house we had received these briefs; we had studied them and they had been reviewed by the officials of both the Department of National Revenue and the Department of Finance. We had heard deputations from most of the organizations that Mr. Benidickson has enumerated. Some of them actually did not wish to be heard through deputations. They were content to send their briefs. But we heard a great number of them and I think we are in a position to give to the committee all the information as to the point of view of any such organization. The briefs have been tabled. They are known to members of the committee and are available. The officials know the views of all of these organizations on every question that may arise. We have the briefs here and are prepared to discuss them. I would like to point out to the committee that we cannot start in to hear some organizations and not open the door wide to whoever may wish to come. I think we will be here for a very long time if we start to invite people to come before the committee. They may be sure that their viewpoint is fully understood and we are here to give the committee all the information on any representation that was made to us. Any member of the committee on any question we come to can ask the question "what representations did you have on this?". As I mentioned in my remarks at the opening on Friday in the case of some of these representations we gave effect to them in the new bill; in other cases we took them up in part and not as to the balance. In every case we did not give effect to them and we are prepared to give the reasons in every case. I would point out also—and perhaps Mr. Benidickson may have overlooked this and did not hear me say it on Friday—the procedure we are following here is precisely the same procedure as Mr. Abbott followed when he introduced the income tax bill some ten years ago when he came before the committee. He rejected any idea of having delegations

heard—the same kind of interested organizations as Mr. Benidickson has mentioned today. He said we have heard all those at length in the department and now we have incorporated some of their ideas and rejected others and this is now our bill; it is a government bill.

This is the same situation we have here today. When this matter was under discussion in the house, I put forward the same idea that in the committee—this can be looked up at page 2104 of *Hansard,* July 10—I pointed out the briefs would be before the committee. There has been no suggestion held out to these organizations at any time that we would be asking the committee to repeat the hearings they have already had. Therefore, Mr. Chairman, I submit to the committee that the procedure Mr. Benidickson is suggesting is quite unnecessary. It is a repetition of something that has already been done. The committee may be very sure it will have all the information about all the views of all the organizations that it wishes to know and it may be very sure now that we have been over all these and have considered them and the new bill is a result of the consideration of all these questions.

Mr. LOCKYER: Has there been any basis of opposition to any of th' amendments that are incorporated in the bill?

Mr. BENIDICKSON: We have not seen the new bill.

Mr. FLEMING (*Eglinton*): The various organizations that made representations to us may, in some cases, have confined their representations to certain outstanding points, outstanding in the sense that in their view they were very important to them. In the case of some organizations they made running comments on the various clauses of the bill. We have all these and we can discuss the views of anyone on any clause of the bill as we come to it. The briefs were all tabled.

Mr. FRASER: Mr. Benidickson said that it was not likely this bill would be reviewed again for some years. Would it be your intention if you received requests from different organizations to review certain parts of the bill that you would perhaps go over it again in a year or so?

Mr. FLEMING (*Eglinton*): We think, Mr. Fraser, that we have a very good bill here. We do not say it is perfect and we are certainly going to watch the operation of the bill very closely in the period after it comes into operation. Members may be very sure if there are any weaknesses found in it or anything that has not been foreseen with the extended study that has been given to it that we will be coming back to parliament for correction of any short comings that may be found.

Mr. FRASER: If that is so, then those people who have put the briefs before the committee and the members of the House of Commons if after they have studied the bill, can request a review?

Mr. BENIDICKSON: After it is passed and mistakes made.

Mr. FLEMING (*Eglinton*): I think there is a misunderstanding there. We know the views of these organizations now on the points that are raised by the bill and any departures in the present bill from Bill 248 of the previous session. We have already put a number of these suggestions into the new bill. In the case of those we have not accepted, we are prepared to give the committee the reasons why.

Mr. FRASER: We ought to let it go on the new bill now and in a year or so bring it back if there is something definitely wrong with it which should be changed. It could come before the committee again.

Mr. FLEMING (*Eglinton*): I would not want to leave the impression we think there is anything wrong with the bill. I am prepared to defend the bill. At the same time, Mr. Chairman, we will welcome free and full discussion of this committee on any aspect of it.

Mr. FRASER: I never said there was anything wrong with the bill but in cases where someone thinks there is it could be remedied and you would be quite willing to check up on it.

Mr. FLEMING (*Eglinton*): I can give an unreserved assurance to the committee just as with the Income Tax Act and the Excise Tax Act these taxing measures will be under constant review and if there is any need indicate of amendment we will be bringing forward amendments year by year.

Mr. FRASER: I think all the people want is the assurance that it will be checked into whenever needed.

Mr. BENIDICKSON: I think that is far from satisfactory. I think one of the chief objections is that you are moving so fast with double meetings scheduled for today and tomorrow, you will find the work of this committee has proceeded so fast that the public is I think going to complain, and these organizations which are interested are naturally going to complain two or three days from now when they realize this committee has started this work. The first publicity that was given was in Saturday's press. It was during the week end. I have had some inquiries today about the bill in regard to what is to be done with it. You will find in the next day or two that will develop. I think it is a most improper procedure to rush through a parliamentary committee and hold two meetings a day on a bill of this importance and have our work finished by the time it would normally develop that organizations would express a desire to come forward and say something about the new bill which they have only had before them a day or two for the purpose of study.

Mr. FLEMING (*Eglinton*): I am sorry that Mr. Benidickson was not here on Friday so this matter could have been dealt with at that time. I am sorry he did not hear my reference at that time, a reminder of the position that Mr. Abbott took with respect to the income tax bill when he brought it forward some ten years ago. I am following the procedure he followed and urged on the committee at that time that they should sit intensively in order to have the benefit of continuity of discussion. While there were some grumblings then in having to sit intensively—and I think they were in the banking and commerce committee—I believe they realized it was a sound procedure. In this way they were not starting here and dropping it and coming back a couple of days later and going over the same ground again.

The advantage of sitting twice a day is threefold. In the first place there will be continuity in a bill that has to be followed to be properly understood. One does not go away and come back a couple of days later and pick up the trend on a new clause. Secondly, we have to consider the officials, and I have mentioned Dr. Eaton. He is attending the committee at my personal request. He is here just by the day and he has his own practice. I just have not any right to ask him to keep on coming back, meeting after meeting and week after week. In the third place I think the idea that was approved on Friday by the committe is going to help the committee over the difficulty of having so many committees sitting at the same time. That is a matter of common complaint and the idea was if we concentrated on this and got on with it that members would be spared the conflicts that arise in attending so many committees which are sitting at the same time if the committee meetings are to be confined as under normal circumstances to say, Tuesday and Thursday.

I want to say this also in regard to the time schedule. I emphasized on Friday that we are here with the officials to offer the fullest information nad to answer all questions so that the committee may have unimpeded opportunity of going thoroughly into the bill. As to the time schedule with respect to the session I have to remind the committee that this bill still has to go to the Senate and will be reviewed in a committee there. We cannot assume this is like some other financial bill which the Senate does not review in detail, like

the Appropriations Act. This one bill I am told the Senate is expected to sit on in committee and we cannot leave it until the last minute in the session.

Those are all reasons, I think, Mr. Chairman, why the decision that I understood the committee took on Friday last is a sound one and will afford the committee the fullest opportunity for a complete and comprehensive study, understanding and review of the bill.

Mr. BENIDICKSON: I do not think probably three members of the committee are familiar with any of the particular briefs that I referred to, coming from national organizations with the possible exception of the brief that we all received as members of parliament from the Canadian Federation of University Women, and I just cannot see how members of the committee would be satisfied to just simply hear the minister say, "I have looked at the complaints that have come from all parts of the country, I have reviewed them with my staff, we are satisfied with our bill, now we will rush it through."

Mr. JONES: Mr. Chairman, I understood the minister to put forward a very different suggestion. I understood him to say that he was prepared not to follow the generalization that Mr. Benidickson has just mentioned, but to outline for the committee the complaints of these various organizations on the various aspects which have come up in respect of this bill and that he and his staff are prepared to advise the committee not only of the complaints of these various organizations on this latter bill in general, but also in respect of the differences of the old bill and this present bill before us. Surely in the light of the assurances that the minister has given us the remarks of Mr. Benidickson are out of order.

Mr. BENIDICKSON: The members of the committee have not been informed of every point raised in the briefs, so they cannot intelligently ask the minister questions unless you want to blindly say on each clause, "Now, what representations did you receive on this clause and from whom and what did they say?"

There is one suggestion I might make—these briefs are so important and so valuable that another suggestion I would make is that we have these briefs filed, these national briefs—not letters from individuals but briefs from national organizations—and that these briefs from these national organizations should be made an appendix to our minutes, so that the members of the committee when they proceed will be fairly well acquainted with the criticisms that have been advanced by these professional organizations after a great deal of work on their part, and they represent the public. It is our duty as a parliamentary committee, not just taking the statement that the minister is satisfied for the reason that there are a lot of things which are to the advantage of the administration, that may lead to ease in their administration and so on but may be very disappointing to the community as a whole or inconvenient to the community as a whole.

Mr. FLEMING (*Eglinton*): Mr. Chairman, Mr. Benidickson is the financial critic of the opposition. He has been over these briefs too, I am sure, but Mr. Benidickson is competent to raise any kind of question that he thinks was soundly raised in any of the briefs, and I will be happy, as I said today and as I said on Friday, to deal with any point and any reason why we accepted suggestions in whole in any brief or why we accepted it in part and did not accept it in whole and, thirdly, why we did not accept it. I am sure that Mr. Benidickson is going to see to it, Mr. Chairman, having discharged his responsibility as financial critic, to see to it that those points are raised.

Mr. BENIDICKSON: Well, Mr. Chairman, I think the minister is certainly imposing an unusual burden on any one member of the committee to bore the committee steadily for several days trying to see just what has been pointed out by one organization and another organization and why the department

decided not to have one section in and to put another section in. I think the committee would feel they had discharged their duty far better if before getting down to the detailed points of the bill it had before it this important view or that important view or at least to know if another view had been submitted.

Mr. GOUR: I was not here Friday, I am able to be here now. I will not be here tonight. I think you said we would be all together; then come to a cocktail party for my son-in-law who is a new lawyer and it is from six to eight. Therefore if I want to be with you you have to come with me.

Mr. BELL (*Carleton*): Are we to take that as an invitation?

Mr. GOUR: A Liberal when he say something it is always what he means. I claim that twice today and twice tomorrow—I do believe you should take maybe fifteen days and still not be sure of that also. It is an important thing and I think you should leave more opportunity for that bill so that it will be in good form. All the experts are very clever because they were well trained like the Liberal party. They are good men. But for the sake of the party, the Tories, give a chance to the profession so that the bill will be in better shape. You understand my anxiety that they will repeat in a year or two a mistake you make. Do not make many mistakes because that will be a big thing next election. I do think it will be better for everyone because we are having nice weather, we are not going to sit up here all night. It would be better for Canada and better for the government. There are only a few Liberals in the house just now, you know we are only a little group. Give us a chance on these committees where we are not sitting all the time and I think it would be a good thing if you had those groups because after all those groups are Canadan people and they are working on these things all day long and have a right to have their views expressed, and I think it would be a good thing if you give them a chance to give their view.

Mr. MACLEAN (*Winnipeg North Centre*): Mr. Chairman, the minister, as far as I can see, has taken a very sensible and practical approach to this whole thing. What Mr. Benidickson requests here cannot be done. We have these briefs and the members of the committee have considered them. Now he wants to have this bill sent back to these people and have it considered again by these professional people and after it comes back we will have it redrafted. That could go on forever. This is something that deserves intensive study and when we sit down to consider it we can go right through it and get the job done. The material in the briefs is available to any member of this committee and any information we want we can get. Let us go ahead and get this job done.

Mr. BENIDICKSON: That is my point, Mr. Chairman. I doubt that there are any more than three members of this committee who have read these briefs. That is what I have put forward. Those who have not should read them and I think that so much care has gone into their preparation that I would say I think they very properly should be made an appendix to our notes. It certainly would be the case if the organization sent a representative here to present their views. We always print their briefs and certainly if they are not going to be here I think the least we can do is to have them printed as an appendix to our minutes.

Mr. CHAIRMAN: On that point we have had 245 and 247.

Mr. BENIDICKSON: They are not there. These have been submitted in May and June, but that is true not of today. You have to do some homework to compare the criticisms that have been made.

Mr. MORTON: How many briefs are there?

Mr. BENIDICKSON: I was referring to those that came from national organizations.

Mr. MacLean (*Winnipeg North Centre*): Would it not be possible to have it printed so that if anyone here wanted to get some briefs they could get it?

Mr. Benidickson: Do members of the committee really want to proceed on the basis that they do not want to be familiar with what the Canadian Retail Federation has said, what the Canadian chambers of commerce have said, what the Canadian University Women's Association has said?

Mr. Jones: No member of this committee, as far as I am aware, would try to rush this. I was here on Friday. This bill was brought before the committee and it seems to me this discussion that has gone on this afternoon for thirty-five minutes would have been all over if the members speaking for the Liberal party had been here at that time.

Mr. Benidickson: The first thing that should have been done with this committee would have been to have a meeting called of the agenda committee on banking and commerce and we could have had a proper discussion of this bill.

Mr. Pallett: Mr. Chairman, the original bill was introduced at the last session of parliament.

Mr. Jones: We discussed this at the first meeting of the Banking and Commerce Committee and we decided at that time we would hold meetings both on Monday and Friday when it became convenient.

Mr. Benidickson: I am speaking of the normal agenda committee where it is decided what witnesses will be called and the times of hearings and so on.

Mr. Lockyer: Mr. Chairman, does Mr. Benidickson suggest that the briefs that have been submitted are generally opposed to the principles of the bill?

Mr. Benidickson: I think after examining some there are some very serious objections throughout the briefs and many objections to parts of the bill.

Mr. Bell (*Carleton*): I do not think that is a fair statement at all. These briefs—and I have read them all—are mostly in favour of the bill. There are things to which they take exception in certain details of the bill, but the minister has indicated to the committee that those objections raised in the briefs will be presented to the committee when we reach those sections of the bill.

Mr. Benidickson: But if those briefs were before the committee it would be of much assistance to the committee.

Mr. Bell (*Carleton*): Surely that is a matter of the conduct of the committee and if the principal objections are available to the members of the committee as they read the sections of the bill it will work probably in a manner which is becoming to the committee. If we print all this volume it will become hard for members of the committee who will not be able to go through it and we will not be able to proceed in an efficient and suitable manner.

Mr. Drysdale: Mr. Chairman, could we not go through the bill on the basis that it is now with the proviso that if there is some objection Mr. Benidickson or somebody else could ask any subsequent questions by returning to that particular section? In other words, maybe Mr. Benidickson is anticipating difficulties which may or may not arise. He apparently has the background and the competency to ask questions on all the sections.

Mr. Benidickson: But I cannot. Do you think I would set myself up as the equal of the certified accountants association in a discussion of this kind or the Canadian chambers of commerce or would I be able to express properly the view of the Canadian University Women's Association or people of that kind? That is a great compliment, but I think it would be far better to get this evidence presented first-hand.

Mr. CREAGHAN: Apparently Mr. Benidickson has more facets than he thought. I still say the only way we can get through the bill is going through it clause by clause and then if anybody like Mr. Benidickson has been provided with questions he wishes to ask we can go back to this particular clause.

Mr. BENIDICKSON: I do not expect to get questions from any organization. If I have any questions it will only be as the result of reading briefs. But this bill, I think, is a harsh denial to those at this point who might be interested in it, such as the Canadian University Women's Association.

Mr. BELL (*Carleton*): It is not a question of refusing. The hon. gentleman is well aware of the fact that what we are doing in respect of this is following a precedent which was proposed by Mr. Abbott, a procedure to which the hon. gentleman did not object at the time, and a procedure to which he should not have the slightest objection now. May I say this, that it was a procedure developed and conducted in a similar way by those to whom he owed his allegiance and I think it should be stated further that this procedure lends itself to the most efficient manner of conducting the committee. I think the best possible way to run this is to follow the bill clause by clause. I think this is the best procedure in a bill as complex as this.

Mr. BENIDICKSON: You do not think if this bill was decided in this way the members of the committee would be able to sift all the material?

Mr. DRYSDALE: I think Mr. Benidickson can. He has to carry the weight.

Mr. BENIDICKSON: Not at all.

Mr. DRYSDALE: I would suggest we go through the act section by section and then see if the difficulties that Mr. Benidickson says are coming up are coming up we can consider them at a later date.

Mr. BENIDICKSON: My hon. friend has at least tried to make a gracious attempt, but on the other hand I would like to hear what the chairman has to say. There is no use passing clause after clause and then finding we are estopped from reverting to this section.

The CHAIRMAN: Mr. Benidickson, I would like to inform you that, for example, the Life Underwriters' Association of Canada were advised and here is their answer:

> "Many thanks for your telephone call of yesterday re today's meeting of Banking and Commerce Committee. After consultation with our general counsel Mr. R. L. Kayler it has been agreed that it is not necessary for us to appear before committee."

Mr. BENIDICKSON: All right, if they were advised who else were advised and what replies were received from anybody else?

The CHAIRMAN:

> "Your kindness in passing message concerning today's meeting was most appreciated."

They asked to be advised and they were advised, and I understand they are the only ones that have asked to be advised and asked to come before the committee.

Mr. BENIDICKSON: Well, I know most of the points they advanced in their brief did have some ground, but there are some organizations to my knowledge which would still have criticisms on the bill.

The CHAIRMAN: Well, Mr. Benidickson, do you not think it would be better to carry on and go through the bill? We can have a start and then if there is an application by some of these organizations to come before the committee then we can put it up to the committee at that stage. If we find quite properly there is some point that we want to hear them on, could we not go into it then?

Mr. BENIDICKSON: Well, supposing—we are here today—supposing we do proceed to clause 2, I think the committee will soon see how valuable some of the briefs of these associations are and how difficult it is to proceed without these organizations presenting their views.

Mr. THOMAS: Mr. Chairman, this matter was settled on Friday and the procedure laid down on Friday. I was not here Friday either, I was unable to be here, but suppose we proceed along the lines laid down. I suggest that this discussion is out of order without a motion to reconsider.

The CHAIRMAN: Well, as the minister pointed out on Friday and again today there was a precedent for this procedure along this line by Mr. Abbott in the income tax bill and we thought we would proceed the same way.

Mr. LOCKYER: Mr. Chairman, I think our officials can give us a clearer, better picture on those who are in favour or those who are against.

The CHAIRMAN: One other thing, when you are speaking perhaps you should give your name because I do not know all of you by name and if you would please give your name before you address the chair it will help the secretary.

Will clause 2 carry?

Mr. BENIDICKSON: Mr. Chairman, here we have a very fundamental and radical departure from past practice. This proposes to bring into taxation foreign real estate. Now, I wonder if somebody could tell us what the trust associations have to say about that, what do organizations who are expert in this field like the Canadian Tax Foundation, say, and some others?

Mr. FLEMING (*Eglinton*): Mr. Smith has the briefs here and can tell you that the organizations mentioned preferred not to bring foreign real estate into taxation, that is to say, real estate situated abroad owned by persons dying domiciled in Canada. But the feeling of the department, after weighing this question very carefully, as Dr. Eaton outlined in the committee last Friday, is that there is no reason in principle for making an exception in favour of real estate. If you tax the personal property situated abroad of a man who dies domiciled in Canada, is there any sound principle that says you should not also bring the real estate into taxation? When I say bring it into taxation I mean actually bring it into the computation of the value of the estate.

I mentioned on Friday—and here we are going over ground which was covered on Friday—that with the principal countries that are concerned we already have tax agreements that prevent double taxation. For example, the United States is the most common case. But there are a number. There were submissions made in opposition to the principle. We think that the principle is correct.

Mr. BENIDICKSON: Well now, I think that we would have to ask somebody to comment on that very important observation on this, as you say, new departure from past practice in the brief of the Canadian Tax Foundation. I know no organization in Canada probably representing the public who takes a more considered and more expert view of some of these matters. They say:

> Heretofore Canada has recognized it not only in the Dominion Succession Duty Act but in its conventions or agreements with respect to the avoidance of double death duties. It is apparent that those conventions or agreements will have to be changed if Bill 248 is not changed in this respect. It may be questioned whether the countries with whom conventions or agreements have been made would be willing to change their own systems of taxation in order to accord with Canada's ideas on the subject, and it is possible accordingly that these conventions or agreements may be terminated by reason of the fact. It is not apparent that the countries with whom Canada has entered into such agreements would recognize Canada's right to levy duty upon land

situated within their borders and at the same time waive their right to levy duties on land situated within the borders of Canada. In other words, it is basic to these conventions or agreements that there should be no exception as to the agreement with respect to situs.

They go on to say that this will produce increased tax to the extent that credit is inadequate, it will raise the aggregate value and consequently the rates of tax and by imposition of an entirely new tax where the foreign realty is not taxed in the jurisdiction where situated. They also make this observation:

> It is suspected that the whole Canadian community is subjected to the increased taxes under headings (a) and (b) in order to bring into charge foreign realty where there is no local death duty where situated.

Now, the trust associations have this to say: they say that the real estate abroad belonging to all Canadian residents is made subject for the first time to the estate duty on death. This is a radical departure from the normal practice in which real estate is subject to taxation on death only in the judisdiction where it is situated.

That observation is contained in practically all the briefs I have already made reference to, but I see how muchmore valuable it would be to this committee in a matter of this kind to have these experts on death duties and administration come before us and tell us what Canadians are thinking about the subject which is now before us. I would like to ask what is the practice in the United Kingdom and the United States?

Mr. FLEMING (*Eglinton*): Mr. Chairman, in view of the fact that Dr. Eaton said something about this the other day perhaps he could elaborate now for the benefit of Mr. Benidickson.

Mr. BENIDICKSON: Of course, I am quoting from a brief which you gentlemen have not got.

Dr. A. K. EATON (*Former Assistant Deputy Minister, Department of Finance*): Mr. Chairman, I might comment a little further on this point and I think I might just say that generally countries do not, under existing law, tax real estate situated abroad.

Now, let me explain further why that system has grown up. Succession duties or death taxes are very old. They have been in force now since the latter part of the nineteenth century. In those days there was never such a thing as a tax credit. Nobody ever heard of it. The results was that none of these countries would tax real estate outside their own boundaries belonging to a person domiciled within their boundaries because they knew that this real estate would be taxed by the country where it was situated. They said, "We will exempt it because there is no mechanism for alleviating double taxation." That is an explanation of the inheritance of this principle of exemption.

Now, in this bill, as distinct from the succession duty law, there is a general provision regardless of treaty, regardless of what any other country does, of giving a credit for tax paid, in respect of property situate in the other country. That you will find in the bill. So the whole question of double taxation is taken care of. There is a very real possibility of Canadians investing in real estate where there are no succession duties or real estate taxes. It would be possible for Canadians to borrow in Canada and have that as a general debt against their estate, and invest that money in real estate in a country which has no succession duty, in which case no duty would be paid on that even though it was owned by a Canadian with a debt accredited against his domestic estate. That is blocked by this bill.

This question was raised when I was on the platform at the Bar Association in the city of Toronto shortly after the old bill came up in January. We had

quite a discussion on this and I am not sure I convinced them. However, I did point out certain features here that they had not recognized when they made their objections.

Mr. BENIDICKSON: I think all I can practically say on this point of the brief is that this is a departure from what is normally done in most countries, and that perhaps this legislation may very well have a bad effect on Canada because this is a country that looks for the import of capital for development, and so on. What would Dr. Eaton say about that comment?

Dr. EATON: I must say that I do not see the relationship between import and capital. I could see where it might discourage the potential export of capital—that is the acquiring of real estate in countries that have no succession duty laws.

Mr. BENIDICKSON: What I had in mind was that if we start this process other countries would probably do the same and this would then probably have a detrimental effect.

Dr. EATON: I think that any other country has the right to follow the course we propose here. I would grant them that right.

I think we are merely following the same principle we follow in regard to income tax. A person resident in Canada pays tax on world income, wherever he receives it. The same principle applies here.

Mr. BENIDICKSON: In connection with real estate tax on real estate, you aggregate here whereas they do not aggregate it in the United Kingdom, do they?

Dr. EATON: I am not sure that they do not tax it. They may bring it in to establish the rate but not apply the tax to the proportionate portion of the estate represented by the foreign real estate.

Mr. MACLEAN (*Winnipeg Norh Centre*): In regard to the different provinces, they have their own estate tax acts. Do they have the same provision, or do you know whether or not they can have the same provision?

Mr. LINTON: They do not. I think it would be ultra vires for them to do so.

Mr. FLYNN: They do the same in regard to property outside the province. Why would they tax movables? That would be intra vires. It seems to me that the direct Dominion Succession Duty Act will impose a tax on movable property outside.

Mr. LINTON: The Quebec succession duty act will impose a tax on movables outside Quebec if they devolve to persons inside Quebec but not if they devolve to persons outside. Real estate outside Quebec is free.

Mr. FLYNN: Even though it devolves to persons residing in Quebec?

Mr. LINTON: Yes.

Mr. BENIDICKSON: Would it not come into the aggregate set rate?

Mr. LINTON: It certainly is not taxed. I am not sure if it gets into the rate.

Mr. BENIDICKSON: Of course it has been advanced here that not only are you taking into the tax something which you did not tax before, but you are bringing up the rate also. The rate of tax, of course, would be higher because the total estate would be higher than it would have been prior to the passing of this bill.

Mr. FLEMING (*Eglinton*): I hope an account will be taken of the point that Dr. Eaton mentioned, namely, that we give a tax credit for foreign tax paid.

Mr. CREAGHAN: It seems to me, Mr. Chairman, that what you are doing is making the tax more uniform. It does not seem right to me that a person can invest in real estate in Florida—build a summer home—but earn the money in Canada to pay for the home, yet unlike his neighbour, have a tax avoidance. It certainly is not basic to assessment.

It seems to me there should be a principle of treating people alike, the rich as well as the poor. I think you will find that most of the foreign estate involved is owned by the more wealthy.

The point was raised with regard to the use of the word "domicile". Supposing a man has a winter home in Florida and a summer home in Muskoka, which principle would be applied?

Mr. FLEMING (*Eglinton*): What was his original domicile?

Mr. CREAGHAN: Supposing his original domicile is half and half? I think this is one of the points raised by the trust companies.

Mr. FLEMING (*Eglinton*): The ordinary rule for determining "domicile" would be applied here. It would have been a mistake to include a statutory definition of "domicile" in the act. The rules which have been laid down in the courts for determining domicile are quite adequate and satisfactory for this purpose.

Mr. FLYNN: Are the civil rules in each court interpreted?

Mr. FLEMING (*Eglinton*): Here there is no problem about the difference between the terms. You are dealing with the question of Canadian domicile.

Mr. FLYNN: This is determined by the rules applicable to each province, even though they are the same?

Mr. FLEMING (*Eglinton*): I do not think there is any difference in this respect between the civil law and the common law in determining domicile.

Mr. FLYNN: It is not determined by this act, it is determined by provincial law.

Mr. FLEMING (*Eglinton*): If the question arises where a taxpayer thinks the department has proceeded wrongly it will be an easy matter to take it to adjudication.

Mr. BENIDICKSON: Dr. Eaton has not commented on the tax foundations suggestion that this departure from past practice will involve amendments, or abrogation of certain of our tax treaties with other countries.

Dr. EATON: I believe it will require negotiation there in certain cases.

Mr. BENIDICKSON: In regard to this question of domicile—this is an interesting point, and probably this is the place to raise it—we are all familiar with the fact that we have two cases; we have those persons domiciled in Canada, and those domiciled outside of Canada. The tax foundation committee again had reference in their brief to the suggestion that perhaps the word "resident" in some cases should be used as well as the word "domiciled". They described a very interesting case. I would like a comment from the experts in this regard.

The tax foundation committee pointed out there might very well be, in this country with so many specialists of American companies operating in Canada, a man who was resident in Canada but not domiciled here. He was not sure that he was not going back to the United States. He had not given up his United States domicile. He died here and his domicile was not in Canada. Supposing this man had a wife and four children. Has there been any consideration given to this? If this man was taxed under the Canadian section as domiciled in Canada, or a Canadian resident? Under this bill he would pay no tax. However, because of his foreign domicile, although he may be a resident of Canada with a wife and four children who had been living here, he would pay 15 per cent tax. That would be $15,000 on an estate of $100,000 as against nothing. What consideration was given to that suggestion of the tax foundation committee that there should be an "and/or" in there as to resident or domiciled?

Dr. EATON: I am not sure, sir. I see what the problem is. If a man is domiciled in the United States and resident in Canada this bill would swing

in and say that a person domiciled in the United States is taxable at the rate of 15 per cent on his property situated in Canada.

Mr. BENIDICKSON: As you know, a lot of American employees do not give up their United States domicile, but they may very well have assets in Canada and may have their residence here in Canada, and live here for some years.

Dr. EATON: That is right.

Mr. BENIDICKSON: In that case, if domicile and not residence is the basis he pays tax of $15,000. In this case he is retaining his United States domicile whereas a man with a wife and four children would pay no tax under this bill.

Mr. LINTON: This man, Mr. Chairman, if he was domiciled outside of Canada, but resident here, would pay on his Canadian property. He would pay the 15 per cent rate.

Of course, since this representation was made, allowance has been made for the deducting of specific debts, like mortgages on residences, which I think this brief, of course, did not consider. He might, if he had a big enough estate, if he could take advantage of it by paying less at the 15 per cent rate than he would pay if he was domiciled in Canada, do so. It seems fair enough to tax him only on his property in Canada if he is not domiciled here.

Mr. BENIDICKSON: The recommendation of the tax foundation committee was that we should refer to residence and domicile in the provinces of Canada.

Mr. LINTON: The word "residence" is a very awkward word to use, Mr. Chairman, in dealing with estate taxes. A residence is very changeable and a very indeterminable sort of thing. Domicile, except in very extraordinary circumstances, is easily established. It is the basis of taxation in all other jurisdictions that I know of except in regard to the United States where they tax on domicile or citizenship, whichever is the better way for them.

Mr. FLEMING *(Eglinton)*: I think that is the point, Mr. Chairman. In regard to taxation of estates of deceased persons the base of taxation is well established in regard to domicile. We use the residence basis in taxing the annual income. That is a very different matter. You are there taxing income literally at one time once a year.

In the other case, where you are taxing a man's estate, surely domicile is the only satisfactory basis. If we ever started taxing on the residence basis we would again open the problem of a man who has more than one residence.

The case Mr. Pallett has cited would present very great difficulties.

Mr. BENIDICKSON: I take it that this new provision would certainly discourage a man from investing in a home here in Canada. He would be far better off to have all his assets in the place of domicile.

Mr. FLEMING *(Eglinton)*: I cannot think that this is going to discourage him. For every discouragement that may be visited on him in that particular case I can cite half a dozen where the shoe is on the other foot.

Mr. THOMAS: Mr. Chairman, may I ask how domicile ties in with residence or citizenship?

Mr. FLEMING (*Eglinton*): The two are not synonimous. Citizenship is one thing, but a number of circumstances are examined in determining where a man is domiciled.

Take for instance the simple case of a man who was born and raised in Canada. He remains in Canada until he reaches the age of 21 and is a Canadian citizen. He goes abroad. The law will require very clear evidence of an indication on his part to change his domicile before it will assume that he has acquired such domicile. If he goes abroad and changes his citizenship by a deliberate act I think the courts would regard that as some indication—not

conclusive—that he intended to make his permanent abode in the country of which he was becoming a citizen and they would treat that as one manifestation of his intention to change his original Canadian domicile.

Mr. THOMAS: Would not citizenship be a greater determining factor?

Mr. FLEMING (*Eglinton*): No, that is one. There are a great many people who change domicile without changing citizenship.

Mr. FLYNN: I suppose there is a question of intention, of course, if a man resides in a place and has his business there?

Mr. FLEMING (*Eglinton*): Yes, if he has a settled abode and he intends to remain there and make that his life home, that would be considered a permanent abode.

Mr. THOMAS: What would happen say in the case of an American citizen who came to live in Canada for 15 or 20 years and died here with a taxable estate? Could his relatives, if there was an advantage in it, claim he was an American citizen?

Mr. FLEMING (*Eglinton*): Yes, but that would not be conclusive. The department, in a case like that, would have a look at all the circumstances. The fact that he had lived here for 15 years would raise a fairly strong prima facie case that he had a Canadian domicile.

Again, it depends on the circumstances of the particular case. You would have to look at them all. The courts are accustomed to doing that and the department is accustomed to doing this in connection with the administering of the present Dominion Succession Duty Act.

Mr. FLYNN: Mr. Chairman, could I ask the minister if it is possible for a man to have his domicile in two countries?

Mr. FLEMING (*Eglinton*): I cannot imagine the situation arising except in the case of the rules that some of the states of the union set up for creating what is called the "matrimonial domicile". There are a lot of cases where a man has acquired matrimonial domicile in six weeks, but that is not the kind of domicile we are speaking of here.

Mr. FLYNN: I am asking if you could tax an estate on the basis of the deceased having been domiciled in two countries. Supposing a deceased was domiciled in two countries, what would happen then?

Mr. D. S. THORSON (*Legislation Section, Department of Justice*): The likelihood of two different courts taking two different views of the situation in two different circumstances is immeasurably reduced if the test is domicile rather than residence.

Mr. FLYNN: I agree.

Mr. LINTON: We have a provision in one or two of the treaties with foreign countries for that very possibility; that two different jurisdictions will each consider that he is domiciled within their borders. We have an equalizing credit if that happens, but so far as I know we have never used the section.

Mr. FLYNN: As long as there is a provision, that answers my question.

Clause 2 agreed to.

On clause 3—property included.

Paragraphs (a), (b) and (c) agreed to.

On paragraph (d):

Mr. LINTON: Mr. Chairman, the difference here is that we refer to disposition rather than gifts. The idea here was that we wanted a section to cover, not by implication, but by statement, any transaction which resulted in the kind of thing stated. This probably was plain enough in the old section but this makes it much more specific.

Mr. BENIDICKSON: I was going to ask if you could give us an illustration of something that you formerly did not cover that you will cover now.

Mr. LINTON: I do not think there is anything that we did not cover. The situation that we might conceivably be in doubt about is one where a gift with a reservation of benefit is made in the form of a sale. They call it a sale but it really is nothing more than a gift a disposition.

Mr. BENIDICKSON: You come down to it a little later on in the inadequacy of the consideration?

Mr. LINTON: In regard to the inadequacy of the consideration, yes, which comes in later.

Paragraph (e) agreed to.

On paragraph (f):

Mr. DRYSDALE: Could you give an explanation of that and compare it with the former section.

Mr. LINTON: The difference here is of principle. The old section taxing joint property looked to the contribution of the properties and the contribution by the deceased. The proportion of the property contributed by the deceased became taxable. Under this provision the part that passes by the deceased's death becomes taxable.

Mr. BENIDICKSON: You have altered this considerably from the former draft; what is the consequence?

Mr. LINTON: That is the consequence. The property now taxable is only what passes.

Mr. BENIDICKSON: I am referring to Bill 248.

Mr. LINTON: Only what passes from the ownership of the deceased by his death. Bill 248 and the old act were based on the same principle. This is different.

Mr. BENIDICKSON: Practically all the briefs said this was an infringement of the gift beyond three years of death principle and that you were putting into tax a widow's joint ownership which you had not done before. Have you corrected that?

Mr. LINTON: This is the point represented and corrected by this. In the ordinary simple way a husband and wife own a home together; half will be taxed unless the joint tenancy was created within three years.

Mr. BENIDICKSON: Except in the province of Quebec.

Mr. LINTON: In the province of Quebec you have different ownership laws.

Mr. BENIDICKSON: You have the community property law there. Is there a limit on the half interest; is it limited to $100,000?

Mr. LINTON: No sir. In the province of Quebec one-half of the community is free.

Mr. FLYNN: If they were married less than three years before?

Mr. LINTON: Still free.

Mr. BENIDICKSON: This is the point which is emphasized so strongly by the national women's organizations brief. We have another place, probably in the exemptions, where we can consider this. We can speak to the chairman again.

Mr. FLEMING (*Eglinton*): That was a point that was bound to rise and if Mr. Benidickson had not raised it, I would have when we came to that question, because it is the question of the status of the widow under the common law. I think if Mr. Benidickson prefers we would deal with that on the exemption section. We had representations from the women's organizations on that point.

Mr. DRYSDALE: I am not too sure I understand the phrasing, "to the extent of the beneficiary's interest" which it says here. Could we have an illustration?

Mr. LINTON: Suppose you have a man and a woman owning a property in joint tenancy and it has been put in their names and provided entirely by the deceased husband say ten years ago. Under the old provision all of it would have been taxed as having been provided entirely by him. Under this provision half would be taxed as being his part of the beneficial interest.

Mr. DRYSDALE: It is just an interpretation of joint tenancy.

Mr. MACLEAN (*Winnipeg North Centre*): Does this mean that even if the property is held jointly or as tenants in common in equal shares that the tax would be the same?

Mr. LINTON: There is no difference as long as an equal half interest in the amount would be taxable.

Mr. MACLEAN (*Winnipeg North Centre*): In joint property even though one person has put all the money in, it will still only be taxed 50 per cent?

Mr. LINTON: Yes, unless the creation was within three years in which case it would fall into the gift section.

Mr. FLEMING (*Eglinton*): We will come to that specific provision or exemption. I touched on that point, the difference we have made in this bill as compared with Bill 248. Here we have adopted the ownership principle which some of the briefs very strongly supported. The change we have made has been gratifying to a number of organizations who did submit briefs.

Mr. BENIDICKSON: And they referred to the old Bill 248 as denying a privilege that had always been there when one property was given up and a new property was purchased again in joint names. That was considered to be a contribution.

Mr. FLEMING (*Eglinton*): This bill breaks new ground in this respect. Bill 248 followed the principle that has always been enshrined in the Succession Duty Act. Now we are giving a new kind of exemption by recognizing this ownership principle.

Mr. BENIDICKSON: But you were taking something away too in Bill 248.

Mr. FLEMING (*Eglinton*): No, no. I think on exemption cases Mr. Benidickson will find what we are doing here is new. This is the first time this principle has been recognized in the law of this country and it is a principle that a number of organizations he has mentioned argued for quite strongly when they reviewed Bill 248, and what we are doing really amounts to a brand new form of exemption.

Mr. BENIDICKSON: The view of the Canadian Tax Foundation, even on Bill 248, was "under present practice if a husband transfers a property jointly to his wife and himself and the property is subsequently sold the departments have recognized that in respect to any property purchased jointly the wife has made here contribution under this section", that is property derived from or exchanged or substituted for any property jointly held is made subject to taxes.

Mr. LINTON: In the old Succession Duty Act we considered and administered it as meaning what Bill 248 clearly says, but we did come to a few cases in which it was held we could not look to substitution, and Bill 248 clarified that we could.

Mr. BENIDICKSON: Your recent practice had not been as outlined in the brief.

Mr. LINTON: It had been as outlined but only very recently.

Mr. FLEMING (*Eglinton*): That is all changed by this clause.

Paragraph (*f*) agreed to.

Paragraph (*g*) agreed to.

Mr. DRYSDALE: What effect has this section in regard to market values of some properties? For example, say you purchase a house for $10,000 and within two or three years it is worth $12,000; is the $2,000 to be included in the aggregate value?

Mr. LINTON: This is the situation. I take it where the deceased has sold the house for something less than it is worth?

Mr. DRYSDALE: No, where the house has appreciated; in other words, we are in a rising market. He might purchase a house for $10,000 and value is taken as of the date of death. It might be worth $12,000.

Mr. LINTON: If he continues to hold the house on the date of his death this section would not operate. It would be valued as of the date he died. This section operates where he has disposed of property for something less than it is worth and if the property so disposed of appreciated in value, the appreciation does not come into it.

Mr. DRYSDALE: Take for instance the other situation. Supposing a man had a house worth $15,000 and he wanted to sell it to his son. He says, "I will make you a gift of $5,000 and charge you $1,000 a year for ten years." The father dies when he is in year twelve. Would the $5,000 be included as a gift tax or would it be forgotten about?

Mr. FLEMING (*Eglinton*): The $4,000 of a $5,000 gift is gift tax exempt, but that is of course the gift tax.

Mr. DRYSDALE: The problem I am speaking of is a sort of continuing disposition. In other words, if he dies in year twelve, if you take the $5,000 at the end, it will come out of the provision to clause 12 if it was considered at the beginning.

Mr. LINTON: He has made a gift of $5,000.

Mr. DRYSDALE: He sells a $15,000 house for $10,000 over a period of ten years.

Mr. THORSON: That disposition I assume took place ten years before the death of the deceased.

Mr. DRYSDALE: Assume it one way or the other.

Mr. LINTON: Suppose he transfers a house worth $15,000 for $10,000 and the $10,000 is payable for ten annual installments. Then the thing would be tested at the date of the transaction which would be more than three years ago and nothing would come in.

Mr. DRYSDALE: In other words, when does it conclude; at the last $1,000 payment?

Mr. THORSON: The disposition took place I suggest at the moment the property was originally disposed of. The other is a method of repayment.

Mr. FLEMING *(Eglinton):* It brings us back to the idea of the disposition.

Mr. DRYSDALE: I do not want to raise it, but I notice the definition has been changed from that in Bill 248.

Mr. LINTON: I think this points up a change made from Bill 248. In Bill 248 any transaction which was payable over a period would come in if it did not conclude more than three years ago. This has been changed so the date effective for testing whether it was within the three years was the date the disposition was made regardless of the date of payment.

Mr. BENIDICKSON: That is in line with the other disposition.

Paragraph (g) agreed to.

On paragraph (h):

Mr. MACLEAN *(Winnipeg North Centre):* Would someone explain that?

Mr. LINTON: This is a situation where property is transferred in consideration of an annuity. Those are frequent between father and son. This, read that section 4 (2), which provides a method of computation, brings them into tax if the amount of the reserved benefit, if the amount of the annuity, is less than the yield of the property. In theory that is the same thing again as a gift with reservation of benefit. If the amount is greater than the yield of the property then section 4 (2) gives a way of splitting the consideration and the gift.

Mr. PALLETT: What do you mean by the yield of the property; when you say the yield of the property do you mean the revenue?

Mr. LINTON: Yes, and the revenue is in the subsequent section. The crucial revenue is 5 per cent. If the annuity is less than 5 per cent of the value of the property or not more than 5 per cent, it is considered to be the yield.

Mr. PALLETT: That would be the property taken at the time of the transfer?

Mr. LINTON: That is right.

The CHAIRMAN: Does paragraph (h) carry?

Agreed to.

On paragraph (i):

Mr. BENIDICKSON: What provision, if any, do you have in the bill for imposing the liability on the executor? Have you any other place where it is stated that the liability should not be on the executor?

Mr. LINTON: That is another representation made which was acceded to and I would go to the section which takes the liability for the tax on the excess which the estate does not get, and which is taxable under this section, and places that liability on the recipient.

The CHAIRMAN: Does paragraph (i) carry?

Agreed to.

Paragraph (j) agreed to.

On paragraph (k):

Mr. BENIDICKSON: Death benefit, what do you call death benefit?

Mr. LINTON: Well, Mr. Chairman, it is taking an account of benefit paid by an employer by reason of the death of his employee pretty generally.

Mr. BENIDICKSON: Do you still have to refer to the payroll benefit in the next section? They are different?

Mr. LINTON: Yes, Mr. Chairman, the paragraph (l) would cover voluntary payments where there was no fund, no plan, no liability, whereas (k) would cover those where there was.

Mr. FRASER: May I ask a question on this, Mr. Chairman? Some of these fraternity organizations have what they call death benefit and they pay to the widow so much for funeral expenses and so much for perhaps something else. Would that be included in the estate?

Mr. FLEMING *(Eglinton)*: Yes, they always have been. They are treated as part of the estate for succession duty purposes.

Mr. THOMAS: Mr. Chairman, may I ask briefly how the value of superannuation or pension would be computed?

Mr. LINTON: Precisely in the same fashion as we use now, which will be incorporated in regulations of the department on the life of the recipient, the expectancy of life of the recipient and an actuarial table of values at various ages. They are based on 4 per cent interest yield.

Mr. FLEMING *(Eglinton)*: Let us take a sample case. An annuity, we will say, consists of $2,000 a year that is payable to a spinster of forty years of

age. The tables show that she has a life expectancy of thirty-two years, your actuarial calculation is $2,000 per year for thirty-two years taken at the present value, discounted by 4 per cent. That is taken to be the actual value at date of death of that benefit.

Mr. FLYNN: Mr. Chairman, am I correct in thinking that some of these pensions payable, for instance, to a widow under the Veterans' Pension Act, were not taxed up to now and would there be a change in this section?

Mr. LINTON: Mr. Chairman, I do not think there is any change in the pension, in the pensions that fall under the Pension Act. There are exemptions in this act and in the old act for these war pensions.

Mr. FLYNN: They are excepted?

Mr. FLEMING (*Eglinton*): We will come to them under the exemptions section.

Mr. PALLETT: One question, Mr. Chairman, on this computation of values of annuities and this principle of double taxation, where a widow receives half an annuity and half cash on which that particular widow pays income tax. Is there some provision to cover payment to her or are the two interlocked?

Mr. FLYNN: There is a provincial credit, is there?

Mr. LINTON: There is no credit given for the income tax paid, no.

Mr. PALLETT: Or the amount that will be paid although she is in fact receiving capital from the capitalized account and yet she is paying income?

Mr. JONES: Is there not a provision for credit in the event she dies before the amount is fully paid?

Mr. FLEMING (*Eglinton*): That is one of the points that was raised in several of the briefs that Mr. Benidickson was referring to and we wrestled with this problem a long time. First of all, let us look at the position with respect to income tax. For any annuity, the payments of taxation begin with income under the Income Tax Act. There must be no departure from that principle. It is income like any other form of income.

Now, let us look at the matter from the point of view of estate tax. I suppose it is just as convenient to deal with this point here. It would have arisen under a later section. It is said it is double taxation because you levy a tax on death. Then, mark you, sir, a benefit accruing to the widow on the death of the deceased, a right raised at that moment under some antecedent principles whether under the will or some contract under which, we will say, the widow receives the right to a benefit or annuity for life or for a fixed term of years.

If you do not treat that as capital and tax it in accordance with well established practices for determining the present value of future payments then you are going to create a discrimination as between different kinds of property.

Part of her assets that the deceased has built up is, we will say, insurance, which becomes part of the capital of the estate and is taxed as such. If he puts his money into real estate it is capital; it is taxed as such. If he puts it into motor cars or racing horses or into stamp collections or into mining stocks or bonds, these are all taxed as part of the estate. But it is being argued by some of those who have submitted briefs that if the deceased puts his investments into an asset which creates on his death a right on the part of the widow to fixed periodical payments in the form of annuities or pensions it should be exempt. But, Mr. Chairman, I think it will be seen by anyone that that would create such a real difficulty, would create discrimination in favour of pensions and annuities. I shall be quite frank with you. I

found it very hard to overcome in my own mind this problem. I think Mr. Benidickson will understand that this problem is what looks on the face of it to be double taxation, the same as when I ran into it and Dr. Eaton can bear out that I sat at the meetings we had over this problem and in the end I had to come to this, that if you do not treat the present value of those future periodical payments as capital and part of the estate you are creating a discrimination in favour of that particular kind of property to the disadvantage of the other kinds of property. Frankly, I cannot see any way through that, try as I might.

Then, there is this problem also: Mr. Jones raised the problem of reassessment. You are dealing with the case of a widow. Here is a life benefit going to her, an annuity, and you say if she does not live out the full span that is assumed by the tables to be her life expectancy would she get any reduction? By that time the widow is dead. The executor might be gone by that time, the whole estate is administered, the widow cannot get any benefit from it and the estate, should the estate get some benefit or should the benefit go back to the original estate?

Your beneficiaries may be spread by that time from Dan to Beersheba and there is another second insuperable problem at that point. But you cannot set this up any way to give the widow the benefit of any repayment after she dies before the annuity has run its full course.

Mr. THOMAS: If you did that it would be contrary to all the practices of the insurance business. If a person takes insurance they get the insurance after their first payment has been made.

Mr. FLEMING (*Eglinton*): I can assure the hon. members this question was one to which I was very sympathetic.

Mr. PALLETT: What about the other person, this person who invested in annuities possibly to buy a house or houses and rented them and say this part, the real estate part was passed on to the widow, she pays income tax on what she receives in income but after she sells it and receives capital from it she does not pay any income tax on that, but in the case of a widow who receives a pension on death of the man she receives a pension on income and it seems to me that is the point where you get double taxation, not only the taxation because of future benefit and in the second case the taxation on what the widow receives as income on capital.

Mr. CREAGHAN: I think the question should be what the widow does with the cash after the disposition of the real estate.

Mr. PALLETT: But if she spends the money she receives in disposition of the real estate, that is not considered as income revenue while the pension, everything she receives is regarded as income.

Mr. FLEMING (*Eglinton*): But her right to receive it is preserved by the form in which that benefit is created for her. My friend Mr. Pallett might go out tomorrow and squander all he owns and apart from his other income he would have that much less income tax to pay because there would not be any income to be paid on the revenue yielded on his capital, and that applies to anyone who handles money. The widow is protected against any dissolution of the capital benefit because she is protected by the will or contract. In that case she is protected against any squandering of the capital so she is getting a pension and she is getting her income.

Mr. PALLETT: That is as between herself and whoever set up the fund but that is not as between herself and the government. I suggest to you, Mr. Chairman, there may be a reason—it may go back to the fact that the person who contributed into the fund received an income tax déduction and

therefore it would all be taxable. Then supposing you take the case of other people where the income tax deduction was not claimed and then you have the point I am referring to.

Mr. EATON: Perhaps I can clarify this. In all these cases where a full annual payment is taxable as in the case where there has been tax postponed on the one hand, that is, where no tax has ever been paid on this income that is thrown into the fund and becomes capital, if you like. Therefore because of the postponement during life and the accumulation of any tax on this income the whole flow becomes taxable at the time it goes out into the hands of the person receiving it. As to the actual annuity, where a man goes out and purchases it, he purchases that with tax paid income. It has already gone through the income tax mill and accordingly he is taxable only on the interest element of it. Therefore in the other case the income tax liability arises a merely as a result of the taxpayer having achieved complete exemption on the flow of capital into this fund with the idea that when he is in a lower income bracket the tax will be at a lower rate.

Mr. PALLETT: And in the instance where no tax exemption is claimed on the provision of the fund when the widow receives her portion, when it is passed on to her, you allow her to apply hers into the return on capital?

Mr. EATON: In a government annuity, yes. If her husband had left her a government annuity which he had purchased out of tax-paid income it is not subject to income tax.

Mr. PALLETT: Or on the other type?

Mr. EATON: Yes, on the other type it would not be income tax exemption as we know it.

Mr. BENIDICKSON: Just on this point, later on we will have a section as to the periodical payments of the succession duties—

Mr. FLEMING (*Eglinton*): That is the other point, the beginning of the difference. Yes, we will come to that.

The CHAIRMAN: Will paragraph (1) carry?

Mr. DRYSDALE: Mr. Chairman, subparagraph (i), is that to provide for cash donations when somebody dies, is that what it is for? If so, are there any administrative provisions? I have seen that problem raised in some briefs.

Mr. LINTON: Mr. Chairman, this would take in cash payments or annuities, whichever they happen to be, which were voluntarily granted. The only administrative difficulties that seem likely is that someone might not determine immediately after death how much they would be and how much they should pay and those would have to be assessed when they come to determine it.

Mr. CREAGHAN: If the gift was made direct to the widow rather than the estate?

Mr. FLEMING (*Eglinton*): Well, your Income Tax Act covers the payment by the employer up to the equivalent of three months' salary of the deceased, but this was designed, you see, to get at cases where the employer, we will say a large corporation, decides to give a whopping big payment to a widow.

Now, we had this case put up to us in the brief again. Should you treat such a payment as exempt or should you treat it as part of the estate? The view that has been adopted is that it should go in as part of the estate because you have no means otherwise to meet a situation where, we will say, your executive of a big corporation has gone along, not drawing all the salary that he could have taken, on the understanding expressed or implied that on his death the corporation is going to make it all up by a substantial payment to his widow. As a matter of fact there was a case where a corporation undertook

to make a payment of $40,000 to a widow. That is the sort of situation that it was felt you could not ignore. Therefore, it is brought in here. It is exempt up to three months' salary under the Income Tax Act.

Mr. DRYSDALE: Is there any limitation on this or would it apply to a payment made any time?

Mr. FLEMING (*Eglinton*): There is no limitation on this sort of thing. It is the sort of thing that would have to be watched to make sure in the case of a corporation that it was not waiting for an indefinite period for an assessment to be completed before it proceeded to be very munificent.

Mr. CREAGHAN: The point that was bothering me on paragraph (1) was whether the word should be "by" or "to"—"property disposed of to any person—"

Mr. LINTON: Mr. Chairman, the "by any person" is the payor, the company or employer or whoever it may be.

Mr. THORSON: If you look at the subparagraph following it refers to a person employed by the deceased as an employee.

The CHAIRMAN: Does paragraph (1) carry?

Mr. BENIDICKSON: This is a new departure too. This is bringing in something that has not been taxable before, a voluntary provision. It may be a small amount in a lump som or it may not be, it may be an annuity, but this is the class of property with respect to which the deceased has no claim. It is not like in paragraph (k) where it is either part of his contract or his fringe benefits, something that he has negotiated, but at the time of his death he has absolutely no legal right to this property at all, it is presumed to be something that is gratuitously come by. This is something done by his employer for the benefit of his widow and most of the briefs have referred to this and complained about it. They suggest, first of all, it will discourage this form of generosity voluntarily on the part of the employer and they also point out that surely in this case when it is not something to do with a man's working arrangement and working conditions surely in this case the crown should be satisfied by collecting income tax.

Mr. JONES: They are not collecting income tax.

Mr. FLEMING (*Eglinton*): There is an exemption to the equivalent of three months' salary and as far as income tax is concerned it is felt everything over and above that should not be exempted, but here I think I will ask Dr. Eaton to comment on that. As I mentioned, this point runs through most of the briefs. It is in most of the briefs and most of them take issue with it.

Mr. BENIDICKSON: I suppose the donor claims this as something the equivalent of his wages?

Mr. EATON: By way of labour. Those are taken as a deduction. It is a labour cost.

Mr. BENIDICKSON: And of course the recipient would pay taxes subject to that.

Mr. EATON: Yes.

Mr. JONES: Three months' exemption at his rate of salary?

Mr. EATON: Remuneration for a man's services.

Mr. FLEMING (*Eglinton*): The estate tax might or might not fall on the recipient. It might be just a levy on the estate in keeping with the estate tax principle.

Mr. JONES: But in most cases there would not be a tax at all because of the three months' salary exemption that had been provided under the Income Tax Act?

Mr. FLEMING (*Eglinton*): It takes care of the majority of cases where the employer makes a salary payment to the widow. This provision, like the provision in the Income Tax Act, is designed to take care of the case where the former employer hands out this whacking big payment and then deducts it from his income as an expense of doing business.

Mr. BENIDICKSON: This whacking big income would be income subject to taxation by the recipient within that year?

Mr. FLEMING (*Eglinton*): Beyond the three months, yes.

Mr. FLYNN: The figure of $40,000 you mention here . . .

Mr. EATON: I might make one other comment. This payment could be taken care of by group insurance. Ordinarily it is done that way and it is the sort of employer who wants to perhaps be a little paternalistic but the whole thing could be done by group insurance and so would not be income of the person.

Mr. NUGENT: Is there any time limit when that gift might be made?

Mr. FLEMING (*Eglinton*): No sir.

Mr. NUGENT: Is there any time limit in regard to when a gift can be made? A gift could conceivably be made a year or two later.

Mr. FLEMING (*Eglinton*): No, sir.

Mr. NUGENT: Perhaps an employer's conscience bothers him in regard to his treatment of an employee, having regard to how his family was getting along, and two or three years, following the death of the employee, he could conceivably make a gift. Does this act in its present form still regard this as part of the estate?

Mr. FLEMING (*Eglinton*): This covers the case of a gratuitous payment.

Mr. CREAGHAN: In other words we read into the section "whenever made"?

Mr. FLYNN: This cannot be taxed. There would be no income tax payable on it. There are two taxes. This might be a barrier in regard to such a donation.

Mr. FLEMING (*Eglinton*): Ordinarily where there is an estate left by a deceased, or will that instructs the executor or the corporation to do so, the tax will be payable on the capital value of the gift. The estate tax will be payable out of the estate and not payable by the widow who is the recipient of the gift from the corporation.

Apart from including that, you are going to open the door wide, to all kinds of properties, to extend benefits at the expense really of the treasury. Every one of these payments costs the treasury, in the form of increased expenses in doing business on the part of the corporation, 47 per cent. It is the treasury which is paying the 47 per cent of the gift by the corporation.

Mr. FLYNN: It could be collected in income tax.

Mr. FLEMING (*Eglinton*): The provisions of the income tax, I would submit, are fair. You do not treat as income a gift to a widow which does not exceed three months' salary of the deceased. If you take a man, we will say, who is earning up to $6,000 a year, three months' salary would give $1,500. That is a good deal more than the vast majority of the provisions which are made. $1,500 can be given in that case without a cent of it being treated as taxable income.

In the case of a widow, she is entitled to her normal exemptions against that. The gift would have to be very substantial before the widow would have to pay tax on it.

If we take the case of a man who was earning $12,000 per year, the three months' salary feature allows the corporation to pay the widow $3,000. I do not suppose there are very many cases where the payment is larger

than $3,000. Against that amount the widow is entitled to her own $1,000 exemption as well as the exemption for the children she may have. She will have those exemptions to set off against the $3,000 income.

It would have to be a very large payment in the hands of the widow before it would attract income tax of any dimension at all.

Mr. NUGENT: Mr. Chairman, there is a difficulty in making up state papers and tax papers because the executor does not know whether there is going to be any disposition of property in favour of the estate by any other person. I can conceivably see that you will be delayed no end waiting for an employer to decide whether or not he wants to make a gift.

Mr. THOMAS: We do not have that difficulty here because the employer is dead already.

Mr. FLEMING (*Eglinton*): No, the employee is dead.

I would just like to deal with the case brought up by Mr. Nugent. He is taking the case where the payment to the widow of the deceased executive of the corporation, is made, not in pursuance of any contract between the deceased and the corporation, but simply as a gratuitous payment on the part of the corporation to the widow after holding back, we will say, for nine months.

The corporation may just be looking the situation over because they are not sure the widow needs the money and they are going to see how well the assets realized, and so on.

There may be a case where the corporation is deliberately holding back in the hope of avoiding tax liability.

Mr. NUGENT: They may be short of money too.

Mr. FLEMING (*Eglinton*): Yes, that is another case.

The fact is, if the payment comes within the terms of this clause it becomes a part of the estate for the purposes of requiring the estate to pay the tax. It is not very likely, except in extraordinary cases, that a gift is going to be made more than a year or so after the date of the death.

If it comes along later, out of part of the estate, it will be the duty of the executor to report and to pay tax on it. If he does not, the widow in that case will be responsible for the payment of the taxes. This would have to be so to assure fair and equal enforcement.

Mr. MORTON: In the case of a late gift would there also be interest on the tax not paid within the six month period, from the date received?

Mr. BENIDICKSON: If this is not something that the deceased had a right of action in respect of—oh, you are thinking in terms of the crown?

Mr. MORTON: Yes.

Mr. FLEMING (*Eglinton*): I think the hon. member will see that this is necessary in order to assure fair and equal treatment for all persons under the act. Interest would be payable there commencing six months after the date of death.

I hope you will note that provision which helps to create an additional sanction against employers holding back—delaying and delaying,—in the hope that the estate will be closed up and someone will overlook reporting this additional benefit.

Mr. CREAGHAN: Mr. Chairman, this might be a poor example but you might have a couple of miners or prospectors in partnership, and one of the partners suffered accidental death while in partnership duties, and five, ten, or even two years later the surviving partner struck gold, or oil and wanted to make a gift to his deceased partner's wife. This gift might be made in the surviving partner's name or in the name of the corporation.

Would the widow then be penalized in regard to interest?

Mr. FLEMING (*Eglinton*): Does your case fall within the terms of this clause at all?

Mr. CREAGHAN: I do not know.

Mr. FLEMING (*Eglinton*): Is it paid under any disposition made voluntarily in recognition of services rendered by the deceased as an employee of that person or as an employee of any other person? That is not an employer-employee relationship. This is probably a straight gift from him.

Paragraph (l) agreed to.

On paragraph (m):

The CHAIRMAN: This paragraph is new. Could we have an explanation in this regard for the record?

Mr. LINTON: Mr. Chairman, this is entirely new and a result, at least in part, of representations made.

The old Dominion Succession Duty Act and Bill No. 248 aimed in a general way at taxing insurance on the basis of what the deceased provided. This aims in a general way at taxing the insurance which he owned or controlled. It has been necessary to elaborate in this because, if you had ownership only, it would be too easily defeated by corporate entities and other means, so it is pretty fully covered as to what is meant "owned" and what is meant by "controlled".

This part has to be read in conjunction with subclause (5) of clause 3.

Basically policies owned by him, or owned by a trust which the deceased could vary the terms of, or owned by a corporation controlled by him, come under the purview of the tax, except that of controlled corporations which are legitimately in business; other than simply collecting revenue from bonds or investments. There is a provision whereby, five years net income from these corporations is regarded as the amount of insurance that they can carry which will be regarded as necessary to the corporation. That amount is free.

Mr. FLEMING (*Eglinton*): I may say that we have had representations in regard to this provision as it appeared in Bill No. 248 in different forms. We have given effect to the representations, recognized the principles for which they contended, and we have had commendations in regard to this clause from those who made those recommendations.

We have, for instance, had insurance companies represented before us, we have had life underwriters associations represented before us and I think we have given effect to the representations they made.

Mr. PALLETT: You also had a letter from me.

Mr. FLEMING (*Eglinton*): Yes, in spite of that letter from Mr. Pallett we did it.

Mr. BENIDICKSON: What is the new feature on paragraph (q)?

Mr. LINTON: The new feature here, Mr. Chairman, is to provide special provisions arising out of the unusual dower rights in Alberta. In Alberta the dower right gives rise to transactions during lifetime in a way that it does not in other provinces.

This paragraph is to try and equate the treatment of an Alberta dower with the dower in other provinces.

Mr. BENIDICKSON: What representations were received with respect to this subclause (2) paragraph (a)?

Mr. FLEMING (*Eglinton*): I do not think there are any representations in respect of subclause (2) paragraph (a), Mr. Chairman. There is no change in substance made by this provision. I do not think we had any representations with regard to this.

Mr. BENIDICKSON: This is the paragraph that the tax foundation committee referred to in regard to the Bathgate case. This appears in part two of the Canadian tax foundation committee's brief in regard to aggregate net value?

Mr. LINTON: Yes. The tax foundation have some mention in their brief.

Mr. BENIDICKSON: The tax foundation committee suggests that the legislators are going to do something now that the law said they could not do.

Mr. LINTON: No, Mr. Chairman.

Mr. BENIDICKSON: That does not come under this one?

Mr. LINTON: The Bathgate case was won by the department. This paragraph is just a continuation of the same practice the courts upheld in the Bathgate case.

Mr. BENIDICKSON: In this regard the tax foundation committee says, and I am quoting from their brief:

> One suspects again that the branch is legislating to prevent repetition of an isolated transaction even though the change will operate to the detriment of the community at large.

Mr. LINTON: Could I ask, Mr. Chairman, where that appears in the brief? The brief is very hard to follow.

Mr. BENIDICKSON: The brief is very hard for all of us to follow because it has reference to Bill No. 248, and it referred to the section of the bill. We have to translate it back to the new bill which is in front of us. This statement appears on the following page.

Mr. LINTON: On page 4?

Mr. BENIDICKSON: On page 4. They are referring to clause 3, subclause (3) paragraph (b).

Mr. LINTON: We are considering clause 3 subclause (2) paragraph (b) now.

Mr. FLEMING (*Eglinton*): We are referring to clause 3 subclause (2) paragraph (b), Mr. Benidickson.

Mr. BENIDICKSON: I will bring it back again.

Subclause 2, paragraph (b) carried.

On subclause 2, paragraph (c):

Mr. JONES: What is new about this?

Mr. LINTON: This is entirely new inasmuch as no provision was made in the Succession Duty Act for tenancies in tail. Tenancies in tail are rare in Canada, but there are some and if there is no provision we suspect they never would be taxable in the death of anyone, in perpetuity.

Mr. FLEMING (*Eglinton*): It is a very old form of land tenure and extremely rare, but because of this rarity it was not included in the definition of property in the Succession Duty Act.

Mr. JONES: You have run across it?

Mr. LINTON: Yes, but they are rare cases, but I happen to know they are in existence, certainly in Ontario and perhaps in some other provinces, and it seemed inequitable not to tax them on the death of anybody.

Mr. PALLETT: I am aware of some farms in that category.

Subclause 2, paragraph (c) agreed to.

Subclause 2, paragraph (d) agreed to.

Subclause 3(a) and (b) agreed to.

On subclause 3, paragraph (c):

Mr. FLYNN: Could we have an explanation in regard to (c)?

Mr. FLEMING (*Eglinton*); There is a pretty full note there in regard to 3(c). The paragraph relates to the value of debts owed to the deceased by a person with whom he was not dealing at arm's length that became statute-barred within three years. We have just had a provision dealing with cases of extinction of statute-barred debts but we could not tolerate that in cases of persons not dealing at arm's length unless it is more than three years. If it is more than three years you have the gift principle. If it is within three years they should not be permitted any extension by these means where parties are not dealing at arms length.

Subclause 3, paragraph (c) carried.

On subclause 4:

Mr. BENIDICKSON: Why this? There is no explanatory note here.

Mr. LINTON: This, Mr. Chairman, is to operate...

Mr. FLEMING (*Eglinton*): That was too clear.

Mr. BENIDICKSON: That is always good for the record.

Mr. LINTON: This is to provide where two persons make an agreement whereby property passes on the death of the first to die. The fact that they both made an agreement together, mutuality of the arrangement, is not itself a valid consideration, thus eliminating the tax on the death.

Mr. FLEMING (*Eglinton*): I know what is going through Mr. Benidickson's mind—the same as mine, the old common law rule that seal importeth consideration. You have a covenant, and it is surely consideration. But the principle here is that the mere existence of the covenant, the giving of the covenant is not to be deemed to be adequate consideration per se. You look behind the covenant itself. The mere giving of the covenant is not deemed to be a consideration.

Mr. BENIDICKSON: I think the explanation was left out because it was going to be too long.

Subclause 4 agreed to.

On subclause 5:

Mr. DRYSDALE: I have one comment to make on section 5; it discriminates in favour of a wealthy spouse or child.

Mr. LINTON: How so?

Mr. DRYSDALE: That is where you have got me. A particular group made this comment and I was wondering if you had any information on that.

Mr. LINTON: I do not think it does, Mr. Chairman.

Mr. FLEMING (*Eglinton*): I really do not follow that at all. It is not confined to any particular group or for any particular amount. It is a general application. I think all one can say is that there is no discrimination. I do not think there is any discrimination created by this.

Subclause 5 agreed to.

On subclause 6:

Mr. BENIDICKSON: Just a minute. This is an exercise of power within three years before the death of the deceased, is it?

Mr. LINTON: What this does, Mr. Chairman, is it treats the exercise of a general power of appointment by the deceased in the same way as the disposition of his own property would have been treated.

Mr. BENIDICKSON: Supposing the deceased had simply 51 per cent of the ownership of the corporation; is the disposition considered to be entirely his?

Mr. FLEMING (*Eglinton*): If he owned 51 per cent he would certainly control it.

Mr. BENIDIKSON: Not necessarily; he might not be getting along with the remaining shareholders.

Mr. FLEMING (*Eglinton*): I would think it would be very hard to conceive of a situation where he held 51 per cent of the voting stock and did not have control of it. It might be different if it were not the voting stock.

Subclause 6, paragraph 2 agreed to.

The CHAIRMAN: That completes section 3. Now we will proceed to section 4.

Mr. FLEMING (*Eglinton*): Here we are coming to the property that is excluded from the reckoning of the value of the estate. We are on the opposite principle here; this is a popular clause.

The CHAIRMAN: Does clause one carry?

Agreed to.

Clause 2?

Agreed to.

Mr. FLEMING (*Eglinton*): This is the clause, Mr. Chairman, that in subclause (a) contains the principle referred to earlier by Mr. Linton of five per cent. It is referred to in both (a) and (b), five per cent in relation to the calculation of the annuity.

Mr. DRYSDALE: Why did you reduce it from six per cent?

Mr. LINTON: Well, Mr. Chairman, we just thought that five per cent was a more sound view of the average yield of property, that six per cent was perhaps too high.

Mr. DRYSDALE: Was it due to pressure that it came down from six per cent to five per cent?

Mr. LINTON: No, I would not say so.

Mr. FLEMING (*Eglinton*): We took a look at that and felt that quite frankly in making that change that five per cent was a more realistically fair figure than six per cent.

The CHAIRMAN: Does clause 3 carry?

Agreed to.

Mr. THOMAS: Mr. Chairman, if we might go back to that clause (a) it was a reduction to five per cent from six per cent, would not that tend to increase the value of an annuity, for instance?

Mr. LINTON: No, I think the reduction in all cases to five per cent, Mr. Chairman, is beneficial to the estate. It assumes that a five per cent yield is the limit to which you can regard the yield as properly being. To take an example, if a man gave $10,000 away and paid back six per cent or $600 he would be taxed on the whole $10,000. Now, if he did that, he would be taxed only on the excess over the capitalized value of the difference between the $600 and the $500.

Perhaps I am not very clear. The five per cent—

Mr. FLEMING (*Eglinton*): This is pretty heavy stuff.

Mr. LINTON: The five per cent is regarded as the normal yield on the property and if he does take an annuity in the transfer of the property of that amount or less he is taxable on the whole value of what he transferred as if it were a gift so that if the amount is six per cent and he gets back $600 or less the whole of this is taxable. If it is five per cent it is only wholly taxable if he gets $500 or less.

Mr. FLEMING (*Eglinton*): This change from six to five is to the advantage of the taxpayer in this situation.

Mr. THOMAS: It is not even for the purpose of computing the capital value of a gift?

Mr. LINTON: It works that way, yes.

Mr. FLEMING (*Eglinton*): It is in the course of that, the point that was made earlier, why it was changed from six to five; the advantage there is with the taxpayer.

Mr. LINTON: Perhaps we can take another sample, Mr. Chairman.

Suppose he transfers property of $100,000 and he gets back an annuity of 10 per cent or $10,000. Then when the amount is six per cent he is taxed on the capitalized value of the difference between 10 per cent and six per cent—I am sorry, he is allowed a deduction of four per cent capitalized at his age. When it is five per cent he is allowed a deduction of $5,000 capitalized at his age, the difference between the $10,000 and the five per cent is regarded as being normal return.

Mr. THOMAS: We will take your word for it.

Clause 4 agreed to.

On clause 5—Amounts deductible:

Mr. BENIDICKSON: Now we are on a section that everybody can understand.

Mr. FLEMING (*Eglinton*): This is one of the popular sections again.

Mr. BENIDICKSON: I was surprised the minister had not made a change here. I thought he would have had solicitors' costs as a proper claim.

Mr. FLEMING (*Eglinton*): We did wrestle with the problem. It is raised in some of the briefs. May I say to the members of the committee who are not lawyers this is a question of the solicitor's fees charged by the solicitor to the executor or administrator in connection with services rendered in the course of not simply an extended administration, probably the lifetime of the estate, but in connection with taking out the letters probate of the will or letters of administration of the estate.

Now, we have had a situation in Ontario where one jurisdiction allowed nothing and the other jurisdiction made an allowance of $100. This $100 did not amount to very much. It is all right in a very small estate but in the larger estates it really did not begin to represent anything like the figure and here is the trouble we are up against and if you try to bring this in—and I was interested in trying, I can assure the committee—here is what we are up against. You cannot ascertain this until some time after. Are you going to allow according to the sliding scale that is observed now in a good many of the surrogate courts? If so, when are you going to determine it and if you are going to leave that wide open to be determined either according to the amount that is actually charged or the amount that accords with the tariff recognized in the particular surrogate court when are you going to determine it, because that might not be determined for a long time, your estate is kept open in the meantime.

Now, here the assessing authorities have got to be able to strike an amount. This is a debt subtracted from the estate before they can assess the tax payable. They cannot wait until the costs are passed a couple or three years later and you have got to come back to the same old thing, some flat rate or sliding scale. The sliding scale is open to some objection, some difficulties. The flat amount is perhaps going to supply an ample amount for the ordinary medium sized estate, but for large estates is something that is virtually worthless, and you get down to the $100 again. The thing was so beset with complications that finally we had to give it up and say well, no allowance is made now, we will have to leave it that way.

Mr. BENIDICKSON: The *Canadian Tax Foundation brief,* I think, complained here, in fact others did as well and others added to it the items of inevitable

expenses that lead to eventual return from the estate. They refer to brokerage charges on transfers of stocks, bonds and so on, and other costs of estates. Someone also referred to the fact that administration is even more difficult because it is a continuing thing and some referred to the distinction that takes place between the estate that is transferred over to the beneficiary who can take personal charge of the administration as against some professional administration which adds to the costs.

Mr. FLEMING (*Eglinton*): Well, we wrestled with that one too on the same basis—expenses that are incidental to the normal function of administration and again you are up against the problem of trying to determine when are you going to determine it. Here is something when the whole pressure is on the department to assess within six months. You have got to get the return in, get all the particulars in regard to debt and the department has to make the assessment all within six months.

Well, these might not be ascertained until the actual letters of administration are passed which might be two, three, five years after and it creates a very difficult problem, the same sort as I mentioned in regard to the solicitor's fees.

We found it very hard, indeed impossible to work out any equitable rule here that would lend itself to administration of the provisions of the act.

Mr. CREAGHAN: Don't you think, Mr. Chairman, that what you have here is going to cause complications and it seems to me many executors will try to get legal taxes but surrogate and probate are not like court costs until the subsequent passing of the cost, and if you confine them to the original issue of the letters it might be easier interpreted.

This way I think they will want to determine the subsequent costs.

Mr. FLEMING (*Eglinton*): Well, Mr. Chairman. I know that the fees paid to the registrar of the surrogate court are deductible. We are speaking of the fees that will be earned in the course of administration by the executor or administrator.

Mr. BENIDICKSON: But there is a good point there?

Mr. CREAGHAN: I mean fees that will be paid on the original issue of the letters and the fees that might be paid a year later on the first or second passing.

Mr. BENIDICKSON: At the time of winding up and if you can pay them why cannot you pay the solicitor who can get his bill in at the winding up.

Mr. FLEMING (*Eglinton*): But that is long after the period of the assessment. What are you going to do—reopen the whole assessment when that time comes? I think you are up against a substantial problem here, Mr. Chairman. I think there are virtually insuperable difficulties on the administrative side and then I believe the number of debts created by the deceased himself is one thing and expenses incurred in carrying his estate through the various stages of administration is another.

The first has always been recognized as a proper deduction from the estate in determining the taxable value. The second has never been recognized and frankly I am afraid I cannot see how you can allow these two things that are different in kind.

Mr. CREAGHAN: I think it would be very much clearer to me, Mr. Minister, if you put in there those things from a revenue point of view.

Mr. FLEMING (*Eglinton*): I am not just interested in revenue, I am interested in writing a bill here which will be beneficial to the taxpaying public.

Mr. CREAGHAN: If you put in the word "initial", or "first" before the word "surrogate" it would eliminate a lot of confusion. If you added the word "initial" before the word "surrogate" there would be no doubt in the executor's mind as to how much they could turn up.

Mr. THORSON: You will note the present provision's reference to court fees in respect of the death of the deceased. I suppose it is possible to argue that where there is a passing of accounts five years later it is questionable whether that is a probate fee in respect of the death of a deceased.

Mr. CREAGHAN: That is the part I am worried about.

Mr. THORSON: This applies where there is a subsequent action altogether.

Mr. FLEMING (*Eglinton*): I think it is quite clear that this is something which arises out of the desire of the executor or administrator to have his accounts audited by a court and so be relieved of the liability. It is not something that necessarily ensues from the death. In many cases the accounts are not audited at all, the beneficiary just signs releases.

Mr. PALLETT: The provisions in many jurisdictions for persons other than executors requires that accounts be passed. This may be contrary to the wishes of the executor because of his desire to save expenses, and so on, but with that requirement he may still be forced to assume the expenses of taxing accounts.

Mr. FLEMING (*Eglinton*): We are dealing here only with the fees payable to the registrar of the court. We are not dealing with fees payable to solicitors on the passing of accounts.

Mr. BENIDICKSON: You are not dealing with solicitors at any stage?

Mr. FLEMING (*Eglinton*): No. The amount payable to the registrar of the court by way of probate is what we are dealing with. We are dealing with money in the surrogate, the probate and other like courts, fees in respect of the death, other kinds of court fees which are determined by surrogate and probate fees.

I think that the ejusdem generis rule of interpretation could include something that occurs after, arising out of the passing of the accounts.

Mr. CREAGHAN: You might put in a lot of expenses.

Mr. FLEMING (*Eglinton*): You could have various kinds of surrogate court fees. You could have the simple case of the probation of a will, or the administration of a will; you could have the case of ancillary letters probate. That is the item which we are getting at here. This is normally not the case. This has to do with fees payable to the registrar on the passing of accounts that may occur long after.

Mr. PALLETT: Am I to understand that the only change in this is to add the words "—in respect of the death of the deceased—"?

Mr. FLEMING (*Eglinton*): That is right.

Mr. PALLETT: Everything else is exactly the same as the Dominion Succession Duty Act.

Perhaps Mr. Linton could tell us whether there has been any problem in administering this, and whether there have been any claims for fees such as for passing of accounts?

Mr. LINTON: Mr. Chairman, I do not think we have had any trouble in respect to this at all.

Mr. PALLET: If there has been no trouble I see no reason for making this change now. This is just to clarify it in respect of the death.

Mr. CHOWN: Is proof required in solemn terms in respect to expenses which are contested?

Mr. FLEMING: (*Eglinton*): If you are speaking of fees payable to the court, then those fees are court fees in respect of the death of the deceased.

Mr. DRYSDALE: Clause 5 paragraph (a) subparagraph (ii) says "any encumbrances created by him,". One organization I believe suggested that the

word "assumed" be added after the word "created". I was wondering if encumbrances assumed would be considered to be created, or would that make any difference?

Mr. FLEMING (*Eglinton*): I suppose you are distinguishing between the case where John Jones buys a property free from encumbrances and then proceeds to add a mortgage on it—the mortgage then is clearly created by him and is an encumbrance—and the case where John Jones buys a property on which there already is a mortgage. That clause is wide enough to provide that the encumbrance that is assumed by him is clearly deductible from the value of the property.

Mr. PALLETT: Is that not a debt incurred?

Mr. FLEMING: (*Eglinton*): Yes.

Mr. CREAGHAN: I am still confused with this clause in regard to fees. Would you call them reimbursements rather than fees?

Mr. FLEMING (*Eglinton*): These are fees charged by the court. They are disbursements as far as the executor or administrator is concerned, but they are properly called court fees. They are fees charged by the registrar of the court.

Mr. PALLETT: You are talking about the actual cash that the court gets?

Mr. FLEMING (*Eglinton*): Yes. The lawyer does not get anything out of this at all. These fees which are payable by the executor to the court on probate, or payable by the administrator to the court on letters of administration.

Mr. MORTON: Mr. Chairman, it is six o'clock.

Clause 5 agreed to.

The CHAIRMAN: We will meet again at eight o'clock tonight.

EVENING SESSION

The CHAIRMAN: Order gentlemen. When we adjourned at six o'clock we had just passed clause 5 and were about to commence with clause 6. This is on page 8.

Clause 6 agreed to.

On clause 7:

Mr. FLEMING (*Eglinton*): Section 7 is one of the important clauses of the bill and perhaps I should say a word in particular about it. I touched on some aspects of the exemptions provided by the act in my opening remarks on Friday and perhaps anything I might say now would be largely repetitious. But I would like to emphasize again the provisions of the act bearing on exemptions and to draw attention to some of the representations that we received in regard to exemptions.

The burden of a number of representations we received was that there should be an exemption of $50,000 from every estate. That was one of two principal representations we had from a number of women's organizations. Now, it will be remembered in Bill 248 of the last session there had been provision for an exemption of $30,000 in respect of every estate. That meant regardless of the size of the estate, whether it was $60,000 or $1,060,000, that amount was deducted from the estate regardless of the family circumstances. A number of these representations however overlooked the fact that no estate under $50,000 pays any taxes under this bill. Now, let us distinguish in our minds at once between a provision that an estate under $50,000 shall not be taxed at all and a provision that there shall be a deduction or exemption of, let

us say, $30,000 from every estate. But in this new bill we have come up halfway in relation to these representations and we have provided here for a flat exemption of $40,000 from all estates. In other words, we have left untouched the provision that no estate under $50,000 shall be taxed at all, but we have also provided that there shall be a deduction of $40,000 now instead of $30,000 as in Bill 248 on all estates. Now, that is the lowest basic exemption. We have provided also however—and here there is no change as compared with the provisions of Bill 248—for this enlarged exemption of $60,000 in every case where the widow survives the husband. Then, as well, there is provision made for an additional exemption of $10,000 in that case for every child surviving who is dependent and under the age of 21 years. I draw attention again to the fact that this $60,000 exemption is available to the estate. The first case is where a deceased male person is survived by a spouse. That is a case of a husband dying leaving the widow surviving. The second case is where a deceased female person is survived by a spouse. This is a case of a wife dying leaving surviving a husband who at the time of the wife's death was infirm and where the wife in that case is also survived by a child under 21 years of age or 21 years of age or over and wholly dependent on the wife or the husband or both for support by reason of being infirm.

Now I will try to repeat that to make it perfectly clear. There is a $60,000 exemption instead of the basic $40,000 where the husband dies leaving a wife surviving. There is also that $60,000 exemption in the case where the wife dies first leaving surviving a husband who is infirm and a child who is either 21 years of age or is over 21 years of age and wholly dependent on his mother or father, or both, by reason of being infirm. Now what is the meaning of "infirm". I was asked that question and if you look at the top of page 45 you will see the definition of "infirm". "Infirm" as applied to any person has reference to any mental or physical infirmity rendering that person incapable ordinarily of pursing any substantially gainful occupation. In other words, the test of infirmity, whether physical or mental is that it renders the husband in this case incapable ordinarily of pursuing any substantially gainful occupation.

Now, the theory or view back of these views is this. The wife under our law is entitled to a preferred position. The law recognizes her right to special consideration. Therefore, there is no question of infirmities or anything else attached to that exemption created in favour of the estate where it is the estate of the husband who is survived by the wife; but the husband gets that preferred protection, or at least the estate gets that preferred protection where it is the estate of a wife only where the husband is infirm and incapable of pursuing a gainful occupation. Now (b) sets forth a basic exemption of $40,000 and (c) provides an exemption of $10,000 in the case of a deceased person in the case of whom a deduction may be made under paragraph (a). That is the case I was just speaking of; $15,000 however instead of the $10,000 in the case of a deceased person not survived by a spouse, for each surviving child who at the time of the death of that person was under 21 years of age or over 21 years of age and wholly dependent on that person. In other words, $15,000 is the exemption in the case of a death where there is no survival by husband or wife but there are dependent children and there is $15,000 there for each surviving dependent child.

Now, to sum it up we think these are, as compared with the existing law, much more generous exemptions than have existed. We think this is a move in the right direction. The value of exemptions in terms of dollars since the Dominion Succession Duty Act came into effect in 1941 has entirely shrunken the value of the dollar. There will be those who will say we would like to have gone further and increased these exemptions. My answer is who would not, but we still have to have revenue to meet the expenses of

government, to pay for national defence and social security and all the other burdens of government. We have stretched the exemptions here further.

There is just one other thing I should mention in relation I think to the submissions that were tendered to us by some of the women's organizations and also by one or two of the other national organizations. It was on the score of treating the wife as entitled to half of the estate on the theory that husband and wife are partners and the wife has contributed equally with her husband to the amassing of whatever estate he may leave. It is, in other words, an attempt to apply to the nine common law provinces of Canada the conception of the community of property under the civil law of Quebec. We have not adopted that proposal and for these reasons. Here I am speaking now only of the common law. What I say now has no application in the province of Quebec. The civil code there creates the community of property unless the parties have contracted themselves out of it in an antinuptial contract. As to the nine common law provinces, there is no recognition in the common law of this theory of partnership as between husband and wife in matters of property. The wife is in no sense responsible for her husband's obligations. The theory of partnership has never been recognized in that respect. Moreover, the wife has never been put on the basis of equality with her husband in every aspect of property law in the common law provinces. To put her on that basis for purposes of succession would necessarily involve a loss on the part of the wife of some of the benefits the law creates for her in her lifetime under the common law. Now, the wife has this recognition of a preferred position. We felt in putting the bill forward in this form we had no right as a federal parliament without any jurisdiction whatever over property and civil rights to write into this taxing statute as though it were a principle of the law of property in the nine provinces, something that has not been made a principle of property law in all these nine provinces. We have a right to legislate in these situations only with respect to taxation. Those briefly I think are the reasons why we felt we had no right to accede to these submissions that were made which were based upon the theory of the law that simply does not receive any recognition in the nine common law provinces.

That leads me to one final observation on this clause. This is something that is pointed out in the submissions of some of the women's organizations. They argue that you should deduct the special exemption of $60,000 only where the will or in the absence of a will the devolution of estate acts in the province provide that the widow shall receive the $60,000.

You will see this clause 7 does not provide that the $60,000 exemption exists only where the widow receives the benefit of $60,000 under the will. To do that would turn counter to the estate principle. The estate principle—again I repeat what I said in my opening statement on Friday—looks at the estate in the gross. It says: "There is a widow here. Therefore we do not look at the devolution, we do not look to see what the widow gets, we do not look to see what each of the four children get, we simply look at the estate en masse and we find that the deceased is survived by a widow."

Well, without inquiring further the act says all right, in that case you take off $60,000 from that aggregate net value of the estate. You look further and you say: "Are there any dependent children here under 21 years of age? Answer: "Yes, there are four of them." Then you go further and take off another $40,000. You do not look at the will, you do not look in the absence of a will to see what provision the law of a province says each widow shall receive or each dependent child shall receive.

There are a couple of features that one might comment on in that respect. The first is that this has simplicity. The second is that in the future you will not have taken what it is not the function of parliament to take, it is the

function of the legislatures of the provinces whose rights must be scrupulously protected. So we leave it to the legislatures of the provinces to determine what benefit the wife shall be entitled to and what rate shall be paid to the testator in making provision for the family and still we leave it to the law of the province to say what provision the widow shall be entitled to before provisions of the will shall have effect. For instance, in some of the provinces, I think in most of the common law provinces you have legislation which gives the dependant relief. At least in Ontario it is provided that the testator may not part with his property by will without first having made adequate provision for those who are dependent upon him.

Now, that is one of the functions of the legislatures of the provinces and we have proceeded here with a view not only to recognize in all respects the established principle of policy but to keep before us at all times the necessity of leaving strictly to the provinces their exclusive jurisdiction over property and civil rights. Therefore these exemptions apply in the circumstances named here. For instance, if there is a widow there is an exemption of $60,000; if there is a dependent child under twenty-one, in that case there is an exemption of $10,000 and so on down the line where the widow receives the $60,000 and where the child receives the $10,000.

Now, there is probably one other observation I might make on that point, in case the point raised in the submissions of some of the women's organizations is weighed further. I think I should say this, that to have moved up from the $40,000 to the $50,000 the basic exemption would have meant that you are leaving only $10,000 of additional exemption in the case where the deceased leaves a widow. Again, thinking about the preferred position of the wife or widow under our law, we felt that $20,000 was certainly not too much of a distinction to make between cases where there is no widow and cases where there is a widow.

I think I have said enough or perhaps too much on exemptions, Mr. Chairman.

Mr. JONES: Mr. Chairman, the women in connection with this matter refer, in support of their argument which you have been discussing, to the fact that under the United States Revenue Act a husband may bequeath to his wife half of his estate at his death exempt from United States inheritance tax. I think they go on to say that the Canadians are archaic in that respect. I wonder if you could comment on that point that they raise?

Mr. FLEMING (*Eglinton*): We think we have as good a bill here as they have in the United States, in fact perhaps in modesty we think we have a better bill. It is true that the law of the United States makes that provision. We have gone some considerable distance beyond the law hitherto existing in providing wider exemptions in the case of the estate of a husband dying leaving a widow surviving and whatever might be said for the conception of community property under the civil law it has not been recognized in the law of nine provinces of this country, not taking anything away from the position—

Mr. BENIDICKSON: Or in the United States.

Mr. FLEMING (*Eglinton*): Well, there are some fourteen states of the union in which the principle of community property has been recognized.

Mr. BENIDICKSON: Originally I think it was only one.

Mr. FLEMING (*Eglinton*): I am told it is now fourteen. So perhaps anyway by this legislation we are taking nothing away from the principle of community property under the law of Quebec, but because it has not been recognized in the other nine provinces we do not think we would be justified

in placing our federal taxing legislation on the basis of an assumption in that respect that has not been carried into the property laws of these other provinces.

Mr. DRYSDALE: Mr. Chairman, the minister raised the concept of infirmity. I was wondering since it comes into the sections rather strangely as to the present application of the definition—just looking at it very briefly it has reference to "any mental or physical infirmity rendering that person incapable ordinarily of pursuing any substantially gainful occupation." The first thing that comes to mind is what kind of test is necessary to establish the mental or physical infirmity? Will it be by a medical certificate or will it be done with the department assessment of the problem? Secondly, what is the difference between a gainful occupation and a substantially gainful occupation? The distinction they have of physical infirmity says any substantially gainful occupation, because the person might be physically or mentally infirm as to the particular occupation that they were pursuing and yet they would not be mentally or physically infirm enough to pursue a substantially gainful occupation?

Mr. FLEMING (*Eglinton*): Those are good points, Mr. Chairman. Perhaps I could take them in order.

The determination of what is infirmity is a matter for the assessing authority. The test of infirmity is assumed at the date of death of the wife in this particular case. If it is claimed in that case that the husband is infirm within the definition contained in this act then the burden will rest upon the executor in that case, the personal representative to furnish affirmative proof to satisfy the Department of National Revenue that the surviving husband is incapable ordinarily of pursuing any substantially gainful employment.

Now, as to what will be required, I do not think one could limit the kind of evidence that will be required. Obviously in any case of that kind if it is submitted by the personal representative that the surviving husband is physically incapable then I would take it there would have to be medical evidence of the fact. In other cases if it is claimed by his personal representative that the surviving husband is mentally incapable then again there would have to be medical evidence. If the man, for instance, is confined at the time in a government hospital I would think that is sufficient evidence and that we would feel that at that time he is incapable of pursuing a substantially gainful occupation.

Now, on the second branch of the question, the matter of pursuing another substantially gainful occupation, I think we can conceive of situations where a surviving husband at the time of his wife's death is capable of doing some things, perhaps looking after himself, but quite incapable of doing anything more perhaps than a few little things that might—suppose, for instance, as a matter of therapy he was asked to take up knitting and sold a few knitted goods, I do not think anyone would say that is a substantially gainful occupation in that case.

These words will have to be given a reasonable interpretation. It does not mean that he has to be able to pursue the calling for which he was qualified by training but it is any substantially gainful occupation and I think in the interpretation of this provision the Department of National Revenue can be relied upon to be reasonable and sensible.

Mr. DRYSDALE: Mr. Chairman, what does the word "substantially" add to "gainful occupation"?

Mr. FLEMING (*Eglinton*): That is what I was trying to illustrate by my reference about the knitting. Let us take a man who is paralyzed except for his hands and arms. As a matter of therapy he is advised to take up knitting and as a result of knitting he sells a few things like socks, wash cloths

and so on. He might sell those. That would be a gainful occupation. All these clauses we are looking at here are for the benefit of the taxpayer in the case of an estate to provide that that estate shall not lose the benefit of the extra $20,000 exemption simply because he can do a little knitting and earn himself a few dollars. It has got to be a "substantially gainful occupation." In other words, if he could not carry on an occupation which would provide him with a livelihood, not just a little pocket money, then the department is not going to say this estate is not entitled to the exempion of $20,000.

That word "substantially" is written in there for the benefit of the estate in that case.

Mr. DRYSDALE: Would it not have been simpler to perhaps have set an average exemption of, say, $50,000 and relate it to infirmity, perhaps increase the exemption as to infirmity; in other words, removing the concept of infirmity because we can see potential administrative difficulties and I was wondering if there would be any saving to the department in the direction of more simplicity?

Mr. FLEMING (*Eglinton*): The department is quite prepared to pass on the problem raised by the definition of infirmity. What is more, we do not think it is fair to put on a basis of equality an estate where the husband is a healthy able man fulfilling a gainful occupation, quite able to look after himself on the one hand, and the estate of the wife where a surviving husband is incapable by reason of mental or physical infirmity of filling a gainful occupation. In other words, we put the estate of the deceased husband whose wife survives him in a category where we say that the estate is entitled to special consideration and therefore we will give the estate a $60,000 exemption and we think that there is merit in giving some special recognition also to the estate of the wife where a surviving husband is in these circumstances dependent wholly upon the wife and where he is not able to go out and earn for himself. Surely in those circumstances some provision should be made to take account of the virtual dependence of the surviving husband and therefore as far as taxing legislation can do it we create a benefit in that estate intended for the benefit of that dependent husband.

The CHAIRMAN: Now, clause 7.

Mr. THOMAS: Mr. Chairman, in connection with that infirmity definition, what about elderly retired people? They both might be quite healthy. If the husband drops off the wife is provided for. If the wife drops off what about the husband? He may have severed all his business connections and be living on the same kitty they have both built up over the years.

Mr. FLEMING (*Eglinton*): If he is infirm in the statutory sense the estate will be entitled to a $60,000 exemption. It will be a matter of determination in every case.

Mr. PALLETT: Is not the key word "substantially" there?

Mr. FLEMING (*Eglinton*): Yes.

Mr. VIVIAN: Mr. Chairman, I am concerned with the same point. Take the case of a surviving husband aged 55 to 70 who is on a limited pension who by reason of age is unable to do as much as he did formerly and because of his age is unable to obtain satisfactory gainful employment. The point I would like to have the minister answer is, why was not some age factor made mention of here specifically? This is going to be very difficult to determine to say what is infirm and what is not infirm over age 65.

Mr. FLEMING (*Eglinton*): Mr. Chairman, the idea of infirmity is not new. This is not a new conception that we have introduced into the law. It has been in the Succession Duty Act for the last seventeen years and experience has not shown any serious difficulty in the interpretation and administration in that

respect. Frankly, I would say in reply to Dr. Vivian's question that it alone is not a satisfactory test in this case. You may find in the case of people over 65 years of age there are some men of 65 who are active and even at the height of their earning power and in these cases where there is no ground for giving the wife's estate in that case the maximum exemption of $60,000. On the other hand there are lots of people who are infirm long before they reach 65. Therefore, to select some particular age or to select age arbitrarily as the basis of entitlement in these cases we think would not be sound or fair. We are trying to make this as equitable as possible, having regard to all circumstances and we do not anticipate difficulty over the interpretation of infirmity.

The CHAIRMAN: Clause 7?

Mr. BENIDICKSON: It is right at this particular clause, Mr. Chairman, that I say more than anywhere we not only have available to us in Ottawa but should have available to us first-class evidence and not second-hand evidence such as we are getting. I have in the dinner recess looked up the Banking and Commerce discussions that took place in 1948 when the Income Tax Act was presented to it and I think the fundamental error that we have committed here is proceeding with our discussions too soon after the presentation of the bill and before the public is aware that these discussions are taking place.

I have called a couple of these women's organizations in Ottawa. They were not aware that we were discussing the problems which they have given quite a number of years to studying through their committees. I have reason to believe that they would like to be heard. I find that at least a week elapsed between the reference by the house to the committee of the study of the Income Tax Act before the committee got under way with its discussions. I think that in itself is important. But I find that when the first sittings of the committee took place that Mr. Macdonnell who was then acting for the opposition raised the question of bringing possible witnesses. He said that he was not aware of anybody who might want to be heard but he simply wanted to know what the attitude of the committee would be.

It is perfectly true, as Mr. Fleming said, Mr. Abbott said at that point he thought as they proceeded with the bill they would find that witnesses perhaps were not necessary as they were simply revising the bill and not bringing in new evidence.

In any event, he said that it would be something that the committee, from time to time, would have to make its mind up about. Here we are discussing, and probably concluding a discussion on a matter that is of keen interest to women's organizations whose senior officers happen to be right here in the city of Ottawa, who know nothing about the fact that these deliberations are being conducted.

Again there is so much in these briefs it is impossible for the minister or anybody else to advise us, even in a very proper resume as he gave us.

In regard to some of these points I think the committee must appreciate the feelings that are back of these briefs. We just cannot take a short summary, such as the minister gave with the best of intentions.

Someone made reference to a criticism of a denial of the practice, and that community property was rather archaic. That statement was attributed to the Canadian committee on the status of women. Actually they use pretty strong language but that particular phrase was not theirs. That phrase came from a group of men who belong to the Canadian tax foundation. They said, and I quote, with respect to this section on community property:

> "It is submitted that this thinking is archaic in Canada and is lagging behind the rest of the world in affording relief. The bill does not recognize that a wife is capable of contributing to the husband's estate by her services, her thrift and her savings."

The women's brief itself, which my friend was quoting from said:

> "It is regrettable indeed if we must continue to make excuses or apologies for outmoded legislation in our state finances."

You could say, therefore, that feeelings are strong in a matter of this kind. I think people of this kind are entitled to be heard.

There are a lot of other points that come up in the briefs which no one could present to this committeee without making a very long speech.

The women quoted the president of the Montreal Trust Company, for instance, as saying that the basic exemption should be $75,000. They say that this gentleman in 1953 claimed that even if the exemption was $75,000 and had been in effect in 1951 there would have been 36 per cent fewer taxable estates but only 6 per cent loss of revenue.

These kinds of things are quite worthy of consideration, I think, and without careful presentation by the people who have some zeal and interest in this subject, we are just going to be moving too quickly.

When it comes to the question of exemption for the widower of a female deceased I think practically all the briefs complain that this provision is restrictive and does not seem to be logical, modern or justified. I find that women themselves are the first to say that in the first place they do not think that this inequity should be provided there. They also point out that the exemption of $60,000 hinges upon the existence of a child. They can conceive that a husband may very well be left infirm, irrespective of the existence of a child, and would certainly find it difficult to maintain himself if infirmity is the test for which the exemption is provided. In the opposite circumstances it is a clear exemption.

Again a men's organization, the interprovincial farm union council, has this to say on this point:

> "We would like to see the act exempting a mentally or physically infirm husband at $60,000 regardless of children. In the case of an able man we feel that lowering the exemption from $50,000 to $30,000—"

It is now $40,000.

> "—is too drastic and would urge that the government consider this clause with a view to using the exemption of $50,000."

There are a lot of representations on this subject. I simply reiterate, we are not covering them in this fashion.

Mr. JONES: I do not understand, Mr. Chairman, how Mr. Benidickson can say, first of all, that we are getting the representations of the women at second-hand. I thought every member of the committee had a copy of the brief that the Canadian committee on the status of women presented to the minister.

Mr. FLEMING (*Eglinton*): I understand that it was circulated quite widely.

Mr. JONES: I would say we received this at first-hand.

Just to clear up the record in regard to the reference to my earlier comment; I was quoting when I used the word "archaic" from the brief of the Canadian committee on the status of women. It may be, as Mr. Benidickson has said, that the Canadian tax foundation has used the same or similar words but the quotation I read was from the Canadian committee on the status of women. That is where the quotation came from.

In the brief which I have and in some of the other briefs I have here, they have set out their thoughts in this regard at great length and in great detail.

Mr. FLEMING (*Eglinton*): Mr. Chairman, with all respect to Mr. Benidickson, I think the committee is well aware of the principal points which were

put forward in the brief. This is one brief which was, as I understood it, sent to all members. Everyone is fully informed as to the representations and views that they entertained.

It is perfectly open to any member to take up those ideas and press them if he thinks they are justified in this committee.

If the committee is going to hear one organization then it will have to hear all organizations, we cannot pick and choose.

With respect, Mr. Chairman, there was not any suggestion held out that the purpose of sending this bill to this committee was to hear organizations at first-hand. The purpose was to afford the opportunity for critical and detailed examination that the hon. members have now of going over this in the way we are doing now, picking up every clause, or every expression that anyone wished to ask questions about.

Mr. BENIDICKSON: I wish my hon. friend had made that clear at the resolution stage.

Mr. FLEMING (*Eglinton*): I did.

Mr. BENIDICKSON: I said very clearly that I anticipated that these people would be called.

Mr. FLEMING (*Eglinton*): I made that quite clear in my remarks. I referred to them here this afternoon, and if my friend will look at page 2104 of Hansard, the second column, he will see there that I made reference to the briefs of these organizations which would be before the committee.

There never was a suggestion that the purpose of sending this bill to the committee was to have organizations heard again who have already been heard before the bill was brought here.

The government has to take the responsibility in all taxing legislation in the last analysis for what it submits to the House of Commons.

Without subtracting one iota from the opportunity in this committee for the fullest discussion, the fullest inquiry into the meaning of every phrase here, or what anybody has submitted in regard to it, I do submit, Mr. Chairman, that the way in which the committee is proceeding now is the proper method having regard to the business of the house and the fact that there is another chamber that this bill must pass through after it leaves the house. I think we are not proceeding with undue expedition.

As I say, if Mr. Benidickson, or any other member wants to take up these ideas that are put forward, not just for further reiteration of them, but to take up the idea and sponsor the idea in this committee, that is a different matter. If he wants to sponsor any of these ideas that are being mentioned, I will be happy to deal with them. If an amendment is brought in then the committee will be in a position to deal with that amendment. Any member could bring in an amendment to give effect to these various ideas.

Mr. Chairman, there is not much use of our talking about increasing these exemptions. Everybody would like to increase exemptions, but when the time comes to increase some of these exemptions to $75,000 I hope I will be the minister of Finance.

The fact is that under the present circumstances we have gone further than the old act did. I do not remember hearing Mr. Benidickson or anybody else arguing for increased exemptions under the old act, year by year.

Some Hon. MEMBERS: Hear, hear.

Mr. FLEMING (*Eglinton*): We are going further than parliament has ever gone before in creating these exemptions.

With respect, I do urge that we be realistic about the situation. We would like to go further; who would not, as I said earlier today, with regard to exemptions? We have to pay for national defence, we have to pay for social security and many other things, and we have a deficit this year too.

Mr. LOCKYER: It is quite apparent that the minister has gone a long way in regard to incorporating these suggestions already.

Mr. CHOWN: I would suggest that if Mr. Benidickson wants to hear these briefs rehashed in detail, we appoint him as a special committee of one, and he better get his politics out of his system and come back here to do what we normally do; that is what we are doing now, going through this clause by clause.

An Hon. MEMBER: He could go and visit the ladies.

Paragraphs (*a*), (*b*) and (*c*) agreed to.

On paragraph (*d*):

Mr. BENIDICKSON: In that connection, there is a reference to the language in respect to a child over 21 being treated similarly, as in the language that is now used in the income tax in respect of a child that is still at school, or at university, notwithstanding the fact that the child is over 21 years of age, being wholly dependent for that purpose.

Mr. FLEMING (*Eglinton*): I do not think the same holds true in this legislation. This legislation deals with the passing of estates, and the other legislation is a matter of provision for exemption out of income tax year by year.

Mr. BENIDICKSON: There is a dependency that could probably be tied to it at the time of death, or something of that kind.

Mr. FLEMING (*Eglinton*): That is true, but the dependency here is between the accounting and the fact, and there is a capital value passing. I think that is the difference.

Mr. BENIDICKSON: With respect to paragraph (d) itself, what has been the practice in regard to the deduction of a charitable gift?

Mr. LINTON: Mr. Chairman, much the same thing is provided here. We have the same test of an organization in Canada.

Mr. BENIDICKSON: You would now have the portion of the tax attributed to the total of the chargeable gift?

Mr. LINTON: Under the Dominion Succession Duty Act, no.

Mr. BENIDICKSON: Under this bill?

Mr. LINTON: No.

Mr. PALLETT: Mr. Chairman, on this clause, does anyone in the department have the figures as to what percentage of estates would be taxable under the new legislation that you propose? It must be a very small percentage.

Mr. LINTON: You are speaking of the total number of estates and the total number of deaths in Canada?

Mr. PALLETT: Yes. I suppose we are dealing with a very small percentage?

Mr. LINTON: Yes, it is very small.

Mr. FLEMING (*Eglinton*): We start out by eliminating every estate under $50,000, and then we start allowing these other deductions as well, and that eliminates a good many more.

If you take the case of a deceased man leaving a wife and four children, there is not a cent of tax levied against that estate unless the estate is over $100,000.

Mr. LINTON: Probably, Mr. Chairman, there would be in the neighbourhood of 4,000 estates in a year which would be taxable—that is, Canadian estates.

Mr. PALLETT: You do not know how many estates are involved in all?

Mr. LINTON: No, but it is very much larger.

Mr. FLEMING (*Eglinton*): We have about 200,000 deaths in Canada.

Mr. PALLETT: That was the figure I was interested in.

Mr. FLEMING (*Eglinton*): It means that you are dealing with tax on estates of about two per cent of those who die in Canada.

Paragraphs (d) and (e) agreed to.

On paragraph (f):

Mr. THOMAS: Could we have a brief explanation of the application of this paragraph on compensation paid under the regulations made under section 5 of the Aeronautics Act?

Mr. FLEMING (*Eglinton*): There is no change providing for that in the present act, Mr. Thomas.

Mr. Chairman, may I ask for an amendment to paragraph (f) of subclause (1) in clause 7 by adding before the figure 112 in line 35, the figures 64, 78, and then 112. Perhaps Mr. Bell would move that, Mr. Chairman.

Mr. BELL (*Carleton*): I will so move that amendment, Mr. Chairman.

Mr. FLEMING (*Eglinton*): This amendment is to include two more sections of the Royal Canadian Mounted Police Act.

Mr. DRYSDALE: I will second that amendment.

The CHAIRMAN: The motion is moved by Mr. Bell, seconded by Mr. Drysdale that Bill C-37, an act representing the taxation of estates, be amended by striking out line 35 on page 10 thereof and substituting therefore the following:

"The War Veterans' Allowance Act or section 64, 78 or 112.."

Motion agreed to.

Mr. FLEMING (*Eglinton*): Mr. Chairman, may I amend an answer that I gave Mr. Thomas a moment ago? I was wrong in stating that these provisions in relation to compensation paid under section 5 of the Aeronautics Act are included in the present Dominion Succession Duty Act. That kind of compensation has been treated as an exemption. These words are not written into the Dominion Succession Duty Act but it has been interpreted to the same effect.

Paragraphs (g) and (h) agreed to.

Subclauses (2) and (3) agreed to.

Mr. BENIDICKSON: Seven on division.

Mr. FLEMING (*Eglinton*): Mr. Chairman, I am just appearing before this committee as a witness, however, would my friend Mr. Benidickson mind my asking him on what basis he is objecting to clause 7? I am not clear yet as to the objection he takes to clause 7.

Mr. BENIDICKSON: I do not feel that I can approve of it. I do not feel that I have had enough evidence on this particular point. I would like to have heard from these other people, and I might say I am following a very good authority of 1948, none other than yourself.

Clauses 7 and 8 agreed to.

On clause 9—deduction from tax: provincial taxes.

Mr. FLEMING (*Eglinton*): Mr. Chairman, in view of the importance of this section probably you would like a word of explanation from Mr. Linton as to the scope of the clause which relates, as you will see, to the deduction of provincial taxes in computation of the tax under this bill.

Mr. BENIDICKSON: I would like Mr. Linton to comment also on the reference in the chartered accountants' brief. I think they question whether or not the words "outside Canada" should be used.

Mr. LINTON: Yes, Mr. Chairman.

At least two of the briefs assumed that the words "outside Canada" should be "outside of the prescribed provinces", but that is not an error.

This clause puts into effect the credit for provincial tax which is wholly related to tax on situs. A later subclause in clause 9 determines the situs of all property. When property has situs in a province which taxes, then a credit results, whether in fact the province taxes that property or not.

If the province taxes property other than what has situs within it then there is no credit. That is extended through to property we tax outside of Canada devolving to persons domiciled in a taxing province inasmuch as the province can and does tax that man's property.

Mr. BENIDICKSON: There was a suggestion, for instance, that property in British Columbia might be taxed, of course, for a resident in Ontario, but the deduction under this clause would not be applicable.

Mr. LINTON: That is so.

Mr. BENIDICKSON: That is so?

Mr. LINTON: Yes.

Mr. EATON: Could I make an explanation there?

I think we could explain that a little further in this way: for example, assuming British Columbia were taxing and not renting, and Ontario was taxing, ordinarily Ontario would be required, or would, in the ordinary course of events, give a deduction in respect of the British Columbia tax.

That is to say, in effect, assuming the rates were equal, Ontario would not be netting any revenue from that property situated in British Columbia where British Columbia has a right to tax it, British Columbia in fact has a prior right, being the province of situs. They would give a credit for that. Therefore we should not, under this provision, give them the credit for that for which they would have to give a credit if they were in the taxing field.

Mr. LINTON: I do not know that there is anything more I can say on that. The change is there, and there is no test as to whether the province taxes property. The question of whether the property has situs in a taxing province is the matter that the briefs complain of, and is supposed to be an error, but is not an error.

Mr. DRYSDALE: Could you give us a simple illustration of the application of this section?

Mr. LINTON: Perhaps we should add, Mr. Chairman, that the abatement is 50 per cent of our duty on any property which has a situs in a taxing province.

Mr. PALLETT: This would only apply to Ontario and Quebec?

Mr. LINTON: Yes.

Mr. BENIDICKSON: How much notice does a province have to give in order to withdraw from the existing agreement?

Mr. FLEMING (*Eglinton*): They have signed agreements to run for the five-year life of the present federal-provincial tax sharing act.

Mr. BENIDICKSON: They could not step out with respect to one particular tax.

Mr. FLEMING (*Eglinton*): I speak subject to correction, but my recollection is the agreement runs for the full five-year period without any power of termination.

Mr. DRYSDALE: Could we have a simple illustration in regard to "the part of the tax otherwise payable"?

Mr. LINTON: Suppose you had an establishment of $100,000 and had $10,000 of this property in Ontario. One-tenth of the tax would be applicable to that and one-tenth of our tax would be applicable to that property and therefore there would be a credit of 50 per cent of that 10 per cent—an abatement of 50 per cent.

Mr. EATON: Ontario will tax that property situated in Ontario and we abate our rate at 50 per cent.

The CHAIRMAN: Does clause 9 carry?

Mr. FLEMING (*Eglinton*): In fairness, may I make this one reservation? I received a telephone call at noon from the general manager of one of the trust companies saying that he wanted to make some representations concerning this clause. It was quite apparent to me as we talked that it was on the same point that Mr. Linton has just now dealt with and which we had considered very carefully before. But I did say to him "now if you have anything you want to submit, send it forward and we will have a look at it." He is writing to me today and if there is anything new in his submission I can bring it to tomorrow's meeting, but otherwise I think it is the same representation we have had from a couple of sources already which has been reviewed.

Mr. BENIDICKSON: I appreciate your intervention in going back to our precedents of 1948. As I quickly looked over Hansard I found the chairman did invariably give to the committee copies of any representations that were received while the committee's deliberations were being carried on. I think if people are approaching the chairman with any suggestions based on that precedent, I am sure he will be willing to convey them to the committee.

Mr. FLEMING (*Eglinton*): I do not know if this particular gentleman would want to be identified or have his company identified, but if there is anything new in his representation I will acquaint the committee fully with it.

Clause 9, subclause (1) carried.

Clause 9, subclause (2) carried.

Mr. FLEMING (*Eglinton*): There is no change in substance there.

On clause 9, subclause (3):

Mr. BENIDICKSON: Now, this is a credit item to which reference was made this afternoon for taxes on foreign realty.

Mr. EATON: In our succession duty law there was no general unilateral credit in the law for foreign taxes. I do not know why that omission happened, but following the succession duty law we made a number of tax agreements with other countries and invariably we gave the tax credit for their taxes at the source if they would do the same for ours. Having written most of these agreements, we now introduce this unilateral credit whereby we give a credit in respect of foreign taxes paid on property situated in foreign countries just as we do under income tax. If any other country taxes income which flows to a Canadian, then the Canadian has in general a deduction in respect of that foreign source. It just parallels the income tax provision.

Clause 9, subclause (3) carried.

On clause 9, subclause (4):

Mr. BENIDICKSON: I notice in subclauses (4) and (5) there has been a revision since Bill 248; could that be explained?

Mr. LINTON: Yes, the revision in subclause 5 is simply of the limit to which the notch operates which is changed because the $40,000 exemption is replacing the $30,000.

Mr. BENIDICKSON: The wording is the same except for the figures?

Mr. LINTON: Yes.

Mr. BENIDICKSON: Going back to the $40,000, does that probably correct some of the instances that I gave at the resolution stage of certain places where the tax under this bill was not necessarily less than the tax under the former Succession Duty Act?

Mr. Fleming (*Eglinton*): Generally speaking the tax on an estate in any particular bracket will be less under this bill than under the Succession Duty Act. That is not to say in other cases that will result. Something would depend upon the number of individual devolutions. For instance, if you have an estate where there are many beneficiaries, many individual devolutions of persons who under the Succession Duty Act have specific exemptions, personal exemptions, you could have in an extreme case like that a lower tax under the Succession Duty Act than you could have under this new bill. But in most cases—in fact in the overwhelming majority of cases—the tax under this new bill will be less than under the Succession Duty Act on an estate in any of the categories. The reductions are particularly material in estates up to $200,000. From that point up the reduction brought about by this present bill tends to become reduced, but in no bracket apart from the situation I have mentioned is the general effect of this act to increase the levy. When you get up to figures like half a million and above that, the tax under this bill is practically the same as it was under the Succession Duty Act.

Clause 9, subclauses (4) and (5) agreed to.

Clause 9, subclauses (6) and (7) agreed to.

On clause 9, subclause (8):

Mr. Benidickson: This involves a great deal of detailed examination.

Mr. Fleming (*Eglinton*): On subclause (8), in view of the fact it is somewhat conflicting, perhaps Mr. Linton will say a word in explanation of any submissions we have had in regard to it.

Mr. Linton: Mr. Chairman, the aim of subclause (8) is to define the situs of different kinds of property. The reason for doing so is to simplify both the administration from the department's point of view and from the estate's point of view. The law of situs is a very complicated affair as you all know, and if you do not have some definition you have constant trouble in deciding what the situs of property is. You have different jurisdictions deciding this within their boundaries at the same time. This problem has been met in all our conventions with other countries by agreed rules of situs. The place of effective transfer is the rule of situs normally followed. We have developed these rules of situs with the idea of keeping as closely as is reasonably possible to the common law rules so that the divergence between our basis of taxation and the provincial basis will be as small as possible.

Mr. Benidickson: The Canadian Tax Foundation which has given this a lot of close study has said in many respects by statute now depart from long-standing rules under the common law as to situs of these various types of property and in several places I was disturbed to have them assert that you are actually creating a difference between situs under this statute and situs as it has long been determined by the common law in provinces that collect their own succession duty. In addition to that there are variations with the situs as contained in our tax treaties with other countries and as now established in our statute. Could you indicate whether you have altered the existing rules?

Mr. Linton: Yes, we can do that. To speak generally, our rules as between Canada and foreign countries follow the rules in the treaties as nearly as possible, but the rules in all the treaties are not quite identical since they were arrived at by negocation.

Mr. Benidickson: They also asserted that even if we did by this statute provide a new rule as to situs in a certain property that the tax treaties would override this. There is a provision in the tax treaties themselves which give them paramount.

Mr. Linton: That may be so, but someone said they probably will have to be renegotiated in reference to this act.

Mr. EATON: On stocks, particularly where there is a common law rule, this is greatly to Canada's advantage to have the situs and shares in Canadian companies defined as Canada and we thought we won quite a victory over the U. K. & U. S. boys in getting them to agree to that rule, which they did. That is one of the cases where we did depart from common law rule.

Mr. BENIDICKSON: One of the simpliest ones, say you are changing the well-known rule with respect to the situs of a negotiable instrument; is that provided?

Mr. LINTON: Yes, to a degree and the reason is for the sake of simplicity. One thing we wanted to avoid was as much inquiry of a technical nature as possible. The rules were designed to avoid having to ask where they are going to transfer property, and whether instruments were under seal or not. We tried to make what they had to report as simple as possible.

Mr. BENIDICKSON: It makes it simple for the administration, but does it create any difficulties with the taxpayers in Ontario and Quebec?

Mr. LINTON: Well, in the odd case it will be advantageous and in other cases it will not. It will depend on whether or not the rules we have determined coincide with what the province does. It would be impossible to follow the same rules which the provinces follow. It is very helpful to executors to have these simplifications inasmuch as it would not be difficult for us to ask all these details on a long return but it would be troublesome for them to pick them up. Often they have not access to the instruments on hand and if we do not know where the transfer agencies are and they do not know where they are going to transfer them, it makes it very difficult. The simplification is not purely from the department's administration's point of view, but from the executor's point of view as well.

Mr. BENIDICKSON: This continues to worry me. I think I would have to stay on division on this at the moment.

Mr. FLEMING (*Eglinton*): There is a printing error on page 16 in the last line of clause 9 of the bill. The figure 39 is a printer's error. It should be 38. Perhaps we could have an amendement. Maybe Mr. Bell would move this amendment.

Mr. BELL (*Carleton*): I move that Bill C-37, an act respecting the taxation of estates, be amended by striking out line 19 on page 16 thereof and substituting therefor the following: "38, be determined as provided in that section."

Mr. DRYSDALE: Mr. Chairman, in paragraph (b) referring to death where they distinguish between companies incorporated federally and those incorporated provincially just sort of looking at it at first blush does it make any difference as to extra provincial companies?

Mr. LINTON: Mr. Chairman, the reason for making a distinction is the basic rule we had and these rules for provinces were taken from the rules for national as against foreign estates. The rule was the place always of incorporation. Well, unless you make a special rule for dominion-incorporated companies you would have them all having a situs in Ontario.

Mr. DRYSDALE: Oh, I see.

Mr. LINTON: And again we think we are closer to the common law rule by doing this than by regarding them all as being in Ontario.

Mr. DRYSDALE: Well, a company incorporated provincially in one province and extra-provincially in another, where would the place be?

Mr. THORSON: Well, it is incorporated in only one place, Mr. Chairman. It may have a licence issued under the Extra-provincial Incorporation Act, but you will still have one place only of incorporation.

Mr. BENIDICKSON: This is new, where you set out so many paragraphs—(a), (b), (c) and so on, that clause 38. I take it it is easier for one to read the statute, it is easier and clearer to find out whether there is agreement between the definitions than in Bill 248. I think this is an improvement.

Mr. FLEMING (*Eglinton*): We still cannot coax you to vote for it even though there is an improvement in it?

Mr. BENIDICKSON: I will have another look at it.

The CHAIRMAN: Well, that is 9.

Mr. BENIDICKSON: It is a drafting improvement. I admit that so far.

The CHAIRMAN: Clause 10?

Mr. BENIDICKSON: I will have another look at it.

Clause 10 agreed to.

On Clause 11—Returns:

Mr. BENIDICKSON: We hear a great deal about six months being an inadequate time for settlement of anything as complex as an estate, and the difficulty of getting professional services.

Mr. FLEMING (*Eglinton*): Excuse me, we have not come to that one yet.

Mr. BENIDICKSON: I though you had carried 10?

Mr. FLEMING (*Eglinton*): But that is not the assessment. Clause 11 just deals with returns. You have got to make returns within six months.

Mr. BENIDICKSON: Well, will interest not run from that—

Mr. FLEMING (*Eglinton*): We will come to the assessment clause later, but this is the clause that requires the return by the executor within six months after the death of the deceased.

The CHAIRMAN: Does clause 11 carry?

Mr. BENIDICKSON: Subclause 2 is pretty broad under administrative power.

Mr. FLEMING (*Eglinton*): Well, it is the same principle as you have and have had for years in the Income Tax Act. There is a right on behalf of the Department of National Revenue to require the filing of a return. It is precisely the same power as was given to the department under the Income Tax Act as far as income tax returns are concerned.

The CHAIRMAN: Will clause 11 carry?

Clause 11 agreed to.

On clause 12—Assessment.

The CHAIRMAN: There is no change until you get down to (5), new in part.

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps as there is a change in subclause (5) you would like to hear a word of explanation from Mr. Linton on that. There is no change in substance in the first four subclauses of clause 12.

Mr. LINTON: Mr. Chairman, by subclause (5) the minister's power to assess and reassess is considerably curtailed as against the old act. But the curtailment is accompanied by doing away with the certificate of discharge. Under the present act he can assess and reassess at any time providing a certificate of discharge has not been issued. Here he can only reassess within definite limitations, but it is not necessary for them to apply for a certificate of discharge, the limitation becomes automatic.

Mr. PALLETT: There have been some interesting decisions under the Income Tax Act on the definition of the word "assessment."

Mr. FLEMING (*Eglinton*): It is those nil assessments.

Mr. PALLETT: Well, it may hit some under the Succession Duty Act.

Mr. FLEMING (*Eglinton*): You do not have that in the Succession Duty Act. That nil in the Income Tax Act is the albino of its breed. There is no such thing under the Succcession Duty Act nor will there be in this act.

Mr. PALLETT: I do not follow that.

Mr. FLEMING (*Eglinton*): After you get a notice of assessment under this act it will be an assessment for all purposes including nil. It may result in showing no total, but it will also be a nil assessment in the sense of the nil assessment that preliminary notice of assessment does show under the Income Tax Act.

Mr. THORSON: Perhaps if I might elaborate on what a nil assessment return represents under the Income Tax Act. It is because of the provision for business losses where a person wishes to establish a minus factor in his income position. Under this statute that sort of issue cannot arise, of a carry forward or carry backward of business losses or farm losses for averaging of incomes. That, I think, is the difficulty that has been encountered under the Income Tax Act.

The CHAIRMAN: Shall clause 12 carry?

Mr. PALLETT: I do not want to worry this point but a person files a return and the estate is not dutiable and they show it and you might write them later saying, "We would like to have a return on this estate." Then, four years passes and someone in the department says, "Well, this real estate was actually worth ten times more." Now, what recourse would the department have after the four years' time?

Mr. LINTON: Well, I suppose if they had not assessed they would still be able to assess.

Mr. PALLETT: That is the point I am getting to.

Mr. FLEMING (*Eglinton*): Take it both ways, Mr. Linton—take the case where there has been an assessment and follow it through and the case where there has not been an assessment and follow that through.

Mr. LINTON: Well, if there has not been an assessment it would still presumably be open; if there had been an assessment it would be closed at the end of four years in respect of these death benefits.

Mr. PALLETT: So in point of fact the fact that there is no assessment is the same as a nil assessment under the Income Tax Act?

Mr. FLEMING (*Eglinton*): In my view you can reassess any time within four years under the amendment that has been produced this year in the resolutions form. That power to reassess is limited to four years in ordinary cases.

Mr. PALLETT: But in this act?

Mr. FLEMING (*Eglinton*): We have got the same rule here, the four-year rule, but that is a reduction. You see, formerly you had a six-year rule under the Income Tax Act.

Mr. PALLETT: But there is nothing to stop a person assessing an estate after four years?

Mr. LINTON: If it has never been assessed at all.

Mr. PALLETT: If the papers have been filed, if an assessment has been made, say, probably it is a remote contingency but it is still there.

Mr. THORSON: Under 13(1) the minister is under an obligation to assess with all due despatch.

Mr. FLEMING (*Eglinton*): I think the case that Mr. Pallett is putting is perhaps a case where there was not a return and four years have passed and Mr. Pallett's case—

Mr. PALLETT: No, I am putting the case where you have written a letter and demanded a return.

Mr. FLEMING (*Eglinton*): And this return has been made and you say no assessment has been made.

Mr. PALLETT: Well, it is not a taxable estate but they just accepted the valuation as filed and therefore the estate is not taxable. Then eight years later, for some reason or other, someone in the department pokes into the estate and sees this real estate was actually worth ten times the value as accepted at that time.

Mr. THORSON: I think the answer to it, Mr. Chairman, is that the assessment would still be open.

Mr. LINTON: You see, Mr. Chairman, if you do not have that you would have people escaping liability through failing to file returns. We will have people coming to us saying, "My wife died in 1894—"

Mr. PALLETT: But this is one where a return was filed.

Mr. LINTON: But if you left it open you would have people who did not file escape.

Mr. BENIDICKSON: What is the true definition of assessment?

Mr. THORSON: "Assessment" is defined only to the extent that the assessment is made for some specific purpose. Otherwise it is as any other definition that is ordinarily attributed to it.

Mr. JONES: Perhaps I might help in advancing what Mr. Pallett is after here. How could an executor, for example, under that clause receive from the department an assessment—

Mr. LINTON: It is so marked.

Mr. FLEMING (*Eglinton*): It is marked "Notice of assessment." It is a prescribed form. It has that heading and it has got a serial number on it and it tells the taxpayer about the fact of assessment.

Mr. JONES: Even when there is a nil return perhaps when there is no tax payable?

Mr. FLEMING (*Eglinton*): The assessment is issued where there is anything to assess. If there is nothing to assess no assessment is issued.

Mr. JONES: Well, the point I think Mr. Pallett is making is that in cases of estates that are not originally taxable therefore no assessment would be made the four-year rule will not come into operation. That is the difficulty that he is raising.

Mr. FLEMING (*Eglinton*): Well, is it a difficulty? You see, these assessments like the Canadian system of income tax is a self-assessment system. The individual taxpayer in the first instance makes his own assesment and he makes up his own return to assess himself and shows his taxes. In those cases while the assessors in the department review this particular return as thoroughly as they can they find no reason to assess; in other words, no reason to conclude that there is any tax payable and then for some reason or other discover later and it may be under conditions for which there is a very serious responsibility on the taxpayer that—

Mr. JONES: That is the point. On making this inquiry if you get yourself in the position of the executor who is primarily liable for the payment of the tax and executors do like to be in the position of clearing themselves with the estate. Now, if you came into a position such as has been outlined here where there is no extra assessment made and he disbursed the funds of the estate then he has no protection under the four-year rule referred to here.

Mr. FLEMING (*Eglinton*): Well, how can you extend any exemption to him because reassessment in that case is depriving the department of a right it must have in the interests of sound and fair enforcement to insist that it have that right in cases where there has not been an assessment.

Mr. JONES: The question here is the relationship or the responsibility of the executor, it is not a question of depriving the department of going after —supposing if it is subsequently found that the estate is taxable. The executor may have disposed of the assets but he is still primarily responsible.

Mr. PALLETT: You could put this case, sir, that you file estate A to get your succession duty release in writing and that is found to have a tax of $30,000 paid. So at the end of four years that estate is free and clear. Estate B is filed to get release as well, it is not taxable. At the end of four years that estate is not clear.

Mr. LINTON: No, Mr. Chairman, but as far as the executor's responsibility is concerned there is a provision relieving him of any liability if he has exercised all due diligence.

Mr. PALLETT: Even apart from the executor's responsibility.

Mr. LINTON: If somebody has filed a non-dutiable return and has not declared all the assets he is still liable for it.

Mr. PALLETT: The liability is the same regardless of whether it is dutiable or not.

Mr. LINTON: If it is found dutiable originally it will get a more careful going over so the likelihood of anything following it is much smaller.

Mr. JONES: Is there a precaution in the bill in the case where an asset is subsequently found to be not properly declared by an executor not through any intention on his part?

Mr. LINTON: Oh, yes, this provision to which I referred where if he has exercised all due diligence he certainly has cleared himself there.

Mr. FLEMING (*Eglinton*): Will you look at the next subclause, line 38, exercised all due diligence and took all reasonable precautions to ensure that the amount so payable by him was paid in full?

Mr. BENIDICKSON: They are new words, they have greatly improved it.

Mr. DRYSDALE: Is not four years sufficient whether there has been an assessment or not? Why cannot the four-year period apply to the provision you are setting?

Mr. LINTON: Excuse me, four years from when would you make it? If you got a return filed with very little in it the work done on it is naturally minimal and if there is to be a closure I suppose we would have to give a more detailed assessment.

Mr. DRYSDALE: But on the other hand why should the executor have tax hanging over his head indefinitely?

Mr. LINTON: He has not if he has fulfilled his obligation, if he has exercised due diligence and made full disclosure.

Mr. DRYSDALE: Then this would cover the executor after four years?

The CHAIRMAN: Well, it is clear if he has exercised due diligence.

Mr. PALLETT: If he has paid $26 tax he is clear. The estate paying $26 tax is clear after four years.

Mr. LINTON: Providing there is no fraud.

Mr. FLEMING (*Eglinton*): The executor is clear if he has exercised due diligence.

Mr. PALLETT: But the estate?

Mr. LINTON: The estate is not completely clear, he is clear.

Mr. PALLETT: I just wanted to bring it up for your guidance.

Mr. DRYSDALE: I think the minister should take steps to finally clear it off rather than going to take another look at it and maybe we will turn something up.

Mr. FLEMING (*Eglinton*): Under these self assessments we are putting an onus on the taxpayer to make full disclosure and an onus on the executor to make himself a full disclosure. He must do this with due diligence and he must make a declaration that he has made that kind of search and has disclosed all the assets.

Mr. DRYSDALE: What you are saying is that the department has two standards, one, if the tax is paid they are going to look at it very closely; if there is no tax to be paid they are just going to glance through it very briefly if at all.

Mr. PALLETT: Could you put in some clause such as this: where an executor requests an assessment on a non-taxable estate it should be subject to the same careful scrutiny as a taxable estate.

Mr. JONES: I do not think we should pass over the "due diligence" quite so lightly, because it does seem to me an executor would have to be in a position to prove due diligence. He has the value of having some sort of departmental ruling to the fact that he has declared the assets.

Mr. BENIDICKSON: Formerly you had a certificate of discharge but now it has gone.

Mr. FLEMING (*Eglinton*): I would like to have Mr. McEntyre, the deputy minister, say what this means and the costs that go with it.

Mr. J. G. McENTYRE (*Deputy Minister, Department of National Revenue*): Mr. Chairman, the costs of the administration of the taxation division are, of course, borne by the public of Canada and if additional duties are placed on the staff of the department to make thorough investigations of all these returns, where little or no revenue is anticipated, then, of course, the costs of administration will go up.

Now, with the self-assessment procedure that we have both for income tax and succession duties we feel that we certainly should be able to rely on executors and others to make out the returns, to complete them fully so that when we get the return it is not assessable or shows very little tax payable we feel that we can spare our staff from examining those as thoroughly as perhaps they may examine the more important returns. For that reason we feel that perhaps the public would expect us to economize as much as we could in our administration.

Mr. FLEMING (*Eglinton*): It is not necessary to examine all the returns equally thoroughly.

Mr. DRYSDALE: Why could you not do it in four years? Why do you require infinity to ascertain whether or not you are going to check up?

Mr. McENTYRE: Well, we lay down a program to get through our work every year in a fairly prompt fashion.

Mr. DRYSDALE: You can reassess the big ones in four years where there is a fairly substantial amount of money involved, but where there is none involved then you require a greater amount of time?

Mr. McENTYRE: We would probably receive 4,000 assessable returns in a year and perhaps as many as 75,000 non-assessable returns.

If we had to look at the whole 80,000 returns in a thorough fashion we would have to have a staff who could look after an average of 200 returns a day. We would need quite a large staff. When we consider that we can slough off 75,000 that are non-assessable and do them with a cursory look, and only have sufficient staff to examine 4,000 assessable returns thoroughly, it means a considerable savings in staff and, of course, expense to the taxpayer.

Mr. DRYSDALE: Do you ever review any of those 75,000 returns, or will you be reviewing them, and if so, how many years do you require if your years is not sufficient—10 years, 15 years, 20 years? I still think there should be a definite ending point instead of infinity.

Mr. MCENTYRE: They would be filed away, and of course, if we had information that assets turned up at some later time which were brought to our attention perhaps to obtain a release, or something of that kind, then we would have them available to look over again at that time.

In the ordinary course they would be given a cursory look, put away and never looked at again.

Mr. DRYSDALE: What would be a reasonable limitation period in your opinion? That period still has not been mentioned.

Mr. MCENTYRE: I believe Mr. Linton mentioned a little while ago that we have some of these cases that turn up 10, 15, 20 years later where some assets that were unknown at the time of the original return are discovered and a release is required so that the executor, or whoever is looking after the estate here, comes back and says, we discovered in such and such a deceased's estate, these assets that have now turned up and we would like to get a release for them.

Mr. DRYSDALE: I realize the situation, but the point I am getting at is, would you not discover this within four years, say, so that this thing does not become ridiculous from an administration point of view, if you are going to discover them at all, so that you could use your re-assessment provision?

Mr. MCENTYRE: I think perhaps if we did not discover it ourselves within a few months after the return was filed it would be put away on the shelf. It would only be, perhaps, as a result of information given to us by an informer, or perhaps from subsequent income tax information resulting in the assessment of a beneficiary's income, or something of that kind that would lead us to the discovery. That might not happen for 10 or 15 years. In the case of additional property turning up, it may not happen for 20 to 25 years.

Mr. DRYSDALE: But if you made the 26th payment, after four years you would be clear?

Mr. LINTON: Not in the case of additional property.

Mr. PALLETT: It is only where you have made a full disclosure that you are free in four years.

Mr. DRYSDALE: There still would be a duty.

Mr. PALLETT: I am wondering about these borderline estates. I suppose if you got very close to a $40,000 estate, and some few years later decided, for some reason, to re-examine them and were to look at the values at that time, there is a loose thought, or something of that sort that—

Mr. LINTON: That would only occur if the duty was so great as to be misfiled in the first place. This is a thing you have to watch out for; that someone does not put in property worth $80,000 at $1,000, while you catch property worth $80,000 being put in at $60,000.

Mr. PALLETT: But in this illustration, say a lot up north at the present time is a rock field, and at some later date there was gold discovered, or uranium, or something of that sort,—

Mr. LINTON: It still would not have value at the date of death. The reassessment is only effective, and would only occur in the case where the difference was so great as to be next door at least to fraud. Most of these re-assessments of small estates would be because of assets not disclosed, or later discovered.

Mr. PALLETT: I would still leave that thought with you.

Mr. FLYNN: The deputy minister said it took 10 or 15 years sometimes to find out these things. That must happen on estates taxable as well as non-taxable estates. I do not think this information would turn up later except in respect of cases where there would be no tax. It seems to me there should be some basis.

Is it not an obligation on an executor if, after having filed a return, he finds out that he has not declared some kind of property, to make a return even after four years has expired?

Mr. LINTON: Mr. Chairman, whether it was dutiable or not dutiable, if it was property not disclosed, the new property then would still be taxable.

Mr. FLYNN: Yes, that is what I thought. If that obligation exists, it seems to me that the department is well protected even on small estates for which they cannot spend as much time as they can in regard to the most important estates.

Mr. JONES: Perhaps we could leave this clause and the thoughts which have been expressed, and the matter might be considered in regard to further amendments that might be worked out in order to provide the protection with respect to the executors.

Mr. FLEMING (*Eglinton*): I have no objection, Mr. Chairman, to this clause being left for the moment. I do not see that we can do much on it. Certainly there is no objection to leaving it for the moment. We will have a good look at it as we are bound to. I think the committee appreciates the difficulties that we are up against with the administrative enforcement of the legislation here.

Mr. PALLETT: May I suggest that there should not be any necessity of changing the amount of work in regard to the administration because of that point. As far as the department is concerned these people are released unless something comes up that they have not disclosed. The practice would not be changed. There is no need to change the practice. It is only when something new comes up that this is re-opened in any event.

Mr. LINTON: Mr. Chairman, there is a point in that if someone has under-disclosed their property or under-valued it seriously and they know that they have a time limit, they are more likely to do so than if they know there is no time limit. We would have to look more closely if there was a time limit.

Mr. FLEMING (*Eglinton*): That would be inevitable, Mr. Pallett.

Mr. DRYSDALE: Four years is a long time.

Mr. PALLETT: I can appreciate the point you are putting forward, but surely there must be some relationship as to how much they can under-value any estate.

The CHAIRMAN: Is this not a club over a person that is going to make a fraudulent return?

Mr. JONES: The problem that is being raised here, Mr. Chairman, is not that we do not want to keep a club over the fraudulent person—nobody wants to protect him—but we do want to protect the person who has honestly tried to do his job as executor. After having done so he then passes on to the distribution of the estate to the best of his ability. He has evaluated the property properly.

The question is, how can he prove ten years later that he has done so when someone says that he should have known there was going to be a new zoning by-law there which would double the value of the property right after the death, or something of that kind. This happens all the time.

Mr. LINTON: I do not think the executor should feel that he is in any great danger in regard to his non-taxable estate if he has exercised due diligence in declaring the property at what he thought it was worth.

The fact that he may have been wrong does not make him culpable.

Mr. JONES: The point I am making here is that he must be able to show you that he has used due diligence. That executor may have died, for example, and it may be physically impossible for him to come and prove his due diligence, and the liability, therefore, will fall on his estate. These things happen. The question here is, how to release that man from the unjust liability.

Mr. PALLETT: The argument for leaving it out of the non-taxable estates supports the argument for leaving it out of the taxable estates.

Mr. FLEMING (*Eglinton*): Could we let this clause stand? We have spent a good deal of time in regard to this clause and I am sure we have argued it threadbare.

Mr. PALLETT: Could we not carry it, and then if the department decides that something can be done an amendment could be introduced in the committee, or in the house? I do not know that we should hold up the clause.

Mr. FLEMING (*Eglinton*): If the committee is prepared to do that, Mr. Chairman, we will have another look at it. If there is anything that we can do to meet the problem in question, we will have a look at it and bring it back before we leave the bill.

Mr. PALLETT: I think we should pass this clause, Mr. Chairman.

Clause 12 agreed to.

Mr. BENIDICKSON: Mr. Chairman, is this a good place to break off?

The CHAIRMAN: We have three minutes left to finish clause 13.

Mr. BENIDICKSON: I might say that clause 13 is a lot more satisfactory than under the old act.

The CHAIRMAN: It has been suggested that clause 13 be left until tomorrow.

Mr. FLEMING (*Eglinton*): We can then have a fresh start.

The CHAIRMAN: Clause 13 is a bad number to finish in three minutes.

—The committee adjourned.